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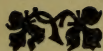
INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 45

DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES

MAY, 1917, TO JULY, 1917

REPORTED BY THE COMMISSION



WASHINGTON
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VOLUME 45

DECISIONS OF THE

INTERSTATE COMMERCE COMMISSION

OF THE UNITED STATES

INTERSTATE COMMERCE COMMISSION.

HENRY C. HALL, Chairman.

JUDSON C. CLEMENTS.¹

CHARLES C. McCHORD.

EDGAR E. CLARK.

BALTHASAR H. MEYER.

JAMES S. HARLAN.

WINTHROP M. DANIELS.

GEORGE B. MCGINTY, *Secretary*.

¹ Commissioner Clements died on June 18, 1917.

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 8738.

PRAIRIE OIL & GAS COMPANY

v.

WABASH RAILWAY COMPANY ET AL.

Submitted July 24, 1916. Decided May 12, 1917.

Reparation awarded on account of illegal charges collected on an iron tank shipped from Shannondale, Mo., to Rantoul, Kans.

J. D. McMurray for complainant.

H. R. Brashear for Wabash Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the oil business, with its principal office at Independence, Kans. By complaint, filed March 20, 1916, it alleges that the charges collected by defendants for the transportation in February, 1914, of an iron tank from Shannondale, Mo., to Rantoul, Kans., were unreasonable by reason of the minimum weight applied. Reparation is asked. The claim was presented to the Commission informally August 16, 1915.

The shipment consisted of a galvanized-iron tank 10 feet long and 8 feet in diameter and weighed 2,750 pounds. It was loaded on an open car, being too large to load through the side door of an ordinary box car 40 feet 6 inches long, and moved January 28, 1914: Wabash Railway to Kansas City, Mo., and the Missouri Pacific Railway beyond. Charges were collected in the sum of \$35.50 on the basis of a combination first-class rate of 71 cents per 100 pounds, composed of 29 cents to Kansas City and 42 cents beyond, and a minimum weight of 5,000 pounds. The rate charged was legally applicable and is not attacked, complainant's contention being that the minimum legally applicable was 4,000 pounds.

The question involved is one of tariff interpretation. The movement from Shannondale to Kansas City was governed by agent

Hosmer's tariff I. C. C. No. A-396, rule 2970-B of which provided as follows:

Minimum charge for articles loaded on open cars,

Shipments, including freight returned for repairs, loaded on open cars, are subject to a minimum charge equal to that for 5,000 lbs. at 1st-class rate for each car used. * * * (See exception.)

Exception: Shipments requiring open cars, account of inability to load through side doors of an ordinary box car not less than 40 feet 6 inches in length, are subject to a minimum charge equal to that of 4,000 lbs. at 1st-class rate. * * *

The movement beyond Kansas City was governed by agent Poteet's tariff I. C. C. No. 305, rule 85 of which provided as follows:

Charges on long articles loaded on open cars.

An article loaded and transported on an open car on account of being too long or too bulky to be loaded through the side door of an ordinary box car of not less than forty feet six inches in length shall be charged at actual weight, subject to a minimum for the shipment of 4,000 lbs. at first-class rate.

The initial carrier, the only defendant represented at the hearing, stated that while rule 2970-B and the exception thereto, above quoted, were indefinite, it was the intention to provide a minimum weight of 5,000 pounds on shipments so large as to require open cars and 4,000 pounds on long or bulky articles which could not be loaded through the side door of an ordinary box car not less than 40 feet 6 inches in length, but could be loaded in furniture, automobile, or other closed cars. But the tariff contained no such restriction. Tariffs must be construed according to their language and the intention of the framers is not controlling.

We find that the charges legally applicable on the shipment in question were those based on a weight of 4,000 pounds at the first-class rate. We further find that complainant made the shipment as described and paid and bore charges thereon; that it has been damaged to the extent that such charges exceeded those legally applicable; and that it is entitled to reparation in the sum of \$7.10, with interest. An order will be entered accordingly.

45 I. C. C.

No. 8653.

CURRIE & CAMPBELL

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted July 3, 1916. Decided April 28, 1917.

Carload of lumber moved from Bronx Terminal, N. Y., to Jersey City, N. J., and return, found to have been misrouted, and reparation awarded.

W. S. Phippen for complainants.

Charles E. Miller for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Ben C. Currie and James H. Campbell, copartners, engaged in the lumber business at Philadelphia, Pa. By complaint, filed February 11, 1916, they allege that the transportation and demurrage charges collected by defendant on a carload of lumber forwarded February 14, 1914, from Bronx Terminal, N. Y., to Jersey City, N. J., there held for several days, and subsequently returned to Bronx Terminal, were unreasonable and unjustly discriminatory. Reparation is asked.

The shipment originally moved from West Virginia, consigned by complainants to themselves at Bronx Terminal, and arrived at destination over the Central Railroad of New Jersey. The customer for whom it was intended refused to accept it. It was subsequently sold for delivery at the foot of East Fifth street, New York, N. Y., to which point defendant's agent at Bronx Terminal was instructed, February 14, 1914, to forward it. On February 16, 1914, the agent advised complainants that the desired delivery necessitated lighterage and quoted them a rate of 7 cents per 100 pounds. Instructions to move the lumber at that rate were immediately telegraphed, and on February 17, 1914, complainants were advised by the agent that their shipping instructions had been followed. The shipment was not, however, delivered at East Fifth street, but, for some undisclosed reason, was floated to Jersey City. On February 25, 1914, while the shipment was still at Jersey City, defendant advised complainants that there was no published rate governing lighterage from Bronx Terminal to East Fifth street and that the quotation of the 7-cent rate was in error. Authority was asked to forward the lumber

at a published rate of 6 cents per 100 pounds for the movement to Jersey City, plus an unpublished charge of \$1.25 per ton for lighterage to East Fifth street. Complainants did not accede to this request, but insisted that the shipment should be forwarded at the quoted 7-cent rate, and corresponded with the Commission concerning defendant's responsibility for the misquotation. For the detention pending this dispute demurrage was assessed. About March 10, 1914, the shipment was sold to a customer at Bronx Terminal, and complainants requested delivery at that point. Before movement was begun, however, defendant insisted that the published rate of 6 cents per 100 pounds was lawfully applicable for the return transportation from Jersey City. Correspondence and controversy again ensued, and for the further detention additional demurrage was assessed. The lumber was finally returned to Bronx Terminal, where apparently it arrived March 16, 1914. Charges aggregating \$81.60 were collected at destination, as follows: \$38.40 for the movement from Bronx Terminal to Jersey City, \$16 demurrage at Jersey City, \$19.20 for the return movement to Bronx Terminal, and \$8 demurrage at Bronx Terminal. The latter charge is not questioned.

Complainants contend that the movement to Jersey City was unauthorized, and attack the legality of the demurrage charges at that point. No evidence was adduced to show that the charges collected would be intrinsically unreasonable or unjustly discriminatory as applied to an authorized movement. Defendant admits that the shipment was moved to Jersey City for its own convenience, and expresses a willingness to refund the charges in question if we shall so determine.

The charges were imposed for and in connection with a service neither requested nor authorized. We find that the charges resulted from misrouting by defendant; that complainants paid and bore the charges; that they were damaged thereby, and are entitled to reparation, in the sum of \$73.60, with interest. An order in accordance with the findings will be entered.

No. 8664.

BEAUMONT TIMBER COMPANY, LIMITED,

v.

INTERNATIONAL & GREAT NORTHERN RAILWAY
COMPANY ET AL.

Submitted June 5, 1916. Decided May 12, 1917.

Charges collected on two carloads of lumber from Willow, Tex., to Wilson, Okla., found to have been illegal and unreasonable. Reparation awarded.

J. M. Simmons for complainant.

L. M. Hogsett and *John M. King* for International & Great Northern Railway Company.

F. R. Dalzell for Gulf, Colorado & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with an office at Zwolle, La., and a sawmill at Willow, Tex. By complaint, filed February 17, 1916, it alleges that the rates charged by defendants for the transportation of two carloads of yellow-pine lumber from Willow to Wilson, Okla., during March and April, 1914, were unreasonable and unjustly discriminatory to the extent that they exceeded a rate of $25\frac{1}{2}$ cents per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved: International & Great Northern Railway to Conroe, Tex.; Gulf, Colorado & Santa Fe Railway to Ardmore, Okla.; Oklahoma, New Mexico & Pacific Railway to destination. The Chicago, Rock Island & Pacific Railway appears to have performed a switching service at Ardmore. The distance over the route of movement is 425 miles. The first shipment weighed 38,200 pounds and charges were collected thereon in the sum of \$112.75, based on a rate of $29\frac{1}{2}$ cents. The second shipment weighed 39,900 pounds and charges were collected thereon in the sum of \$121.75, based on a rate of $30\frac{1}{2}$ cents. There was no joint rate in effect. The rate legally applicable was a combination rate of $29\frac{1}{2}$ cents, composed of a rate of 23 cents from Willow to Ardmore and a rate of $6\frac{1}{2}$ cents beyond. The first shipment was overcharged 6 cents, and the second, \$4.05.

Blanket rates apply on lumber from points in Texas to points in Oklahoma. Willow is located in what is known as the southwestern

yellow-pine blanket, more particularly described in *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33. On January 24, 1914, a rate of 25½ cents was established from points on the Gulf, Colorado & Santa Fe and Chicago, Rock Island & Gulf railways, and St. Louis & San Francisco Railroad, with which points Willow is ordinarily grouped, to Wilson and other points in Oklahoma. It is stated by the initial carrier that this rate, which was less than the rate formerly in effect, was established following the establishment of rates in Oklahoma, prescribed by the Oklahoma state authorities, which had the effect of projecting such rates from points in Texas to points in Oklahoma over lines whose rails extended between points in these states. On August 20, 1914, a joint rate of 25½ cents was established over the route these shipments moved from Willow to Wilson. This rate is still in effect. It is stated that this rate was established to meet competition and was not made effective earlier for the reason that the International & Great Northern Railway had no agreement as to divisions with the Oklahoma, New Mexico & Pacific Railway, a then recently constructed line. The initial carrier observes, however, that the present rate is not applicable by way of Conroe but by way of Navasota, a more direct route. The shipments were unrouted and under the tariff could have moved by way of either Navasota or Conroe.

It appears that rates on lumber from numerous points in the territory of origin are blanketed to destinations in Oklahoma, but were not at the time of movement from points on the International & Great Northern. No sufficient reason is shown warranting the exclusion of those points.

We find that the charges collected were illegal to the extent that they exceeded the charges that would have accrued at the rate of 29½ cents per 100 pounds, which rate we find was legally applicable; that the legal rate was unreasonable to the extent that it exceeded 25½ cents per 100 pounds; that complainant made the shipments as described, and paid and bore the charges thereon herein found illegal and unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$35.35, with interest. This amount includes the overcharges referred to above.

An appropriate order will be entered.

No. 8787.

KIMBERLY CLARK COMPANY

v.

AMERICAN EXPRESS COMPANY.

Submitted August 15, 1916. Decided May 12, 1917.

Express rates on paper in carloads from Kimberly, Wis., to New York, N. Y., not shown to have been or to be unreasonable. Complaint dismissed.

Felix J. Streyckmans for complainant.

T. B. Harrison and *E. E. Bush* for American Express Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of print paper, with its principal place of business at Neenah, Wis. By complaint, filed April 4, 1916, it alleges that the rate assessed by defendant for the transportation by express of three carloads of print paper from Kimberly, Wis., to New York, N. Y., on February 18 and 19, 1916, was unreasonable. Reparation is asked and the establishment of a reasonable rate for the future.

The shipments, aggregating 129,350 pounds, moved as alleged. Charges were collected in the sum of \$3,954.17, based on the first-class any-quantity rate of \$3.05 per 100 pounds, governed by the official express classification.

There is no evidence of record to show that the rate charged was intrinsically unreasonable. But complainant questions the propriety of classifying paper in carloads first class, while certain other articles are classified second class, or are given special commodity rates in carloads. It does not appear that the articles cited compete with complainant's product. Complainant also contends that as a general rule a commodity should be rated lower in carloads than in less than carloads. We have, however, approved the application of any-quantity rates on traffic moving by freight in the absence of a showing that the demands of the public would not be adequately served unless carload rates were established. *Stuarts Draft Milling Co. v. So. Ry. Co.*, 31 I. C. C., 623. We see no reason why the same rule should not apply to shipments by express.

Upon the present record we would not be warranted in requiring the establishment of a commodity rate. If the shipments had moved

by freight the rate applicable would have been 28½ cents per 100 pounds. The complainant admits that ordinarily the service by freight is satisfactory. The forwarding by express of the shipments in issue was required by reason of the fact that owing to a congestion at New York freight shipments could not be delivered in time to fulfill complainant's contract with a publisher at that point. It is only in such emergencies that carload shipments of paper would move by express.

We find that the rate assailed is not shown to have been or to be unreasonable, and an order dismissing the complaint will be entered.

No. 8794.¹

SWIFT & COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted September 7, 1916. Decided May 12, 1917.

1. Commodity rates on certain carload shipments of dressed poultry, butter and eggs from interior Iowa points to Chicago, Ill., found to have been unreasonable to the extent that they exceeded class rates prescribed in *Cedar Rapids Commercial Club v. C., R. I. & P. Ry. Co.*, 28 I. C. C., 76, and 29 I. C. C., 539.
2. Combination rates on certain carload and less-than-carload shipments of dressed poultry, butter and eggs from interior Iowa points and Trenton, Mo., to destinations east of the Indiana-Illinois state line, found to have been unreasonable to the extent that the components up to the Mississippi River exceeded the proportional class rates prescribed in *Interior Iowa Cities Case*, 28 I. C. C., 64, and 29 I. C. C., 536.
3. Reparation awarded.

Luther M. Walter and *E. W. Skipworth* for Sulzberger & Sons Company.

R. D. Rynder for Swift & Company.

H. K. Crafts for Armour & Company, intervener.

Kenneth F. Burgess, *R. B. Scott*, *A. P. Humburg*, *Wallace T. Hughes*, *F. S. Hollands*, and *R. C. Sanders* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases, which are related, were heard together and will be disposed of in one report.

¹ The proceeding also embraces complaint in No. 8813, *Sulzberger & Sons Company v. Chicago, Burlington & Quincy Railroad Company et al.*

Complainants are corporations engaged in the meat-packing business, with their principal offices at Chicago, Ill. By complaints, filed April 8 and April 15, 1916, they allege that the commodity rates assessed on various carload shipments of dressed poultry, butter, and eggs from certain interior Iowa points to Chicago, during 1914, were unreasonable to the extent that they exceeded the third-class rates, and that the combination rates assessed on various carload and less-than-carload shipments of the same commodities from certain interior Iowa points and from Trenton, Mo., to points east of the Indiana-Illinois state line, during 1914 and 1915, were unreasonable to the extent that they exceeded through rates based on the class proportionals to the Mississippi River, plus the separately established rates beyond. Reparation is asked. Armour & Company intervened at the hearing, July 14, 1916, praying reparation on the same basis as that set forth in the complaints on certain shipments made in 1914 to eastern destinations under the rates assailed herein. Claims covering the intervenor's shipments were seasonably filed.

The western classification rates dressed poultry, butter, and eggs, in straight or mixed carloads, third class; in less-than-carload quantities dressed poultry is rated first class except in baskets with cloth tops (one and one-half times first class), and butter and eggs second class. In *Interior Iowa Cities Case*, 28 I. C. C., 64, we found that the class proportionals applicable between interior Iowa points and the Mississippi River on traffic to and from points east of the Indiana-Illinois state line were unreasonable, and subsequently, 29 I. C. C., 536, approved the schedule of reduced class proportionals submitted by the defendants in accordance with the views expressed in our original report. The lower proportionals became effective April 1, 1914. In the original report we remarked that commodity rates also were involved, and that it would be well for defendants to embrace commodity rates in the schedules to be submitted, or at least to indicate clearly some basis upon which their commodity rates would be brought in line with the principles upon which the class rates were required to be readjusted. In the latter report we said:

The carriers have not followed this suggestion and have filed no schedule of commodity rates or basis for their construction. It is our understanding, however, that the Iowa interests consider that the present proportional rates west of the river on commodities originating east of the Indiana-Illinois state line should remain in effect except where the class proportionals herein established make lower, in which event the class rates should govern. This we approve, and if we are not correct in our understanding the matter may be again called to our attention.

Upon all of the shipments here in question to destinations east of the Indiana-Illinois state line defendants applied proportional com-

modity rates to the Mississippi River lower than the class proportionals condemned in our first report but higher than the reduced proportionals thereafter approved and established. The commodity proportionals were canceled, effective upon various dates in May, 1914.

In *Cedar Rapids Commercial Club v. C., R. I. & P. Ry. Co.*, 28 I. C. C., 76; 29 I. C. C., 539, we prescribed reduced class rates for application between Chicago and interior Iowa cities, but the proof was not sufficient to enable us satisfactorily to deal with the commodity rates named in the record. The reduced class rates became effective April 1, 1914.

Upon the shipments to Chicago defendants also assessed commodity rates lower than the class rates condemned but higher than those prescribed and established as stated. These commodity rates were subsequently canceled, effective July 1, August 1, and September 1, 1914.

No evidence was offered by defendants, but they rested their opposition to the relief sought upon our denial of reparation in *Des Moines Commodity Rates*, 34 I. C. C., 281, 286-287. In that case, referring to prayers for reparation contained in 13 individual complaints consolidated with the principal complaint, all brought prior to our decision in the *Interior Iowa Cities Case*, *supra*, assailing the proportional class and commodity rates between Des Moines and the Mississippi River, we said that in line with our policy in that case we would not award reparation on shipments moving under rates since reduced in compliance with our orders in the group of cases involving Iowa rates.

In this case the shipments moved after the effective readjustment of the class proportionals and through rates, pursuant to our findings and conclusions in the *Iowa Cases*. We see no justification for the application to this traffic, during the periods in question, of commodity proportionals and through commodity rates exceeding the respective class bases theretofore prescribed by us as maxima, and to the extent that they exceeded those respective bases we are of the opinion and find that the rates charged were unreasonable.

The shipments from Trenton moved to eastern destinations in part initially over the line of defendant Chicago, Rock Island & Pacific Railway and in part over the line of defendant Quincy, Omaha & Kansas City Railroad, the latter owned and controlled by defendant Chicago, Burlington & Quincy Railroad. Commodity proportionals from that point to the Mississippi River were inadvertently canceled as to the defendant Chicago, Rock Island & Pacific, May 17, 1914, and as to the defendant Chicago, Burlington & Quincy, October 1, 1914. The result was that class proportionals became effective from Trenton and made higher combinations than those in connec-

tion with the commodity proportionals which were canceled. The commodity proportionals were subsequently restored by the Chicago, Burlington & Quincy on November 27, 1914, and by the Chicago, Rock Island & Pacific on April 1, 1915, as to dressed poultry and on May 3, 1915, as to butter and eggs. Defendants admit that the cancellation of the commodity proportionals from Trenton was made in error, and introduced no proof in justification of the increased rates. The burden was upon them to justify the increased rates, and we find that the rates assessed on the basis of the class proportionals to the river were unreasonable by the amounts that those proportionals exceeded the commodity proportionals previously in effect and subsequently reestablished.

We further find that the complainants and intervener made the shipments as described and paid and bore the charges thereon at the rates herein found to have been unreasonable; that they have been damaged to the extent that the charges paid exceeded those that would have accrued on basis of the rates herein found to have been reasonable; and that complainants and intervener are entitled to reparation, with interest, on all shipments not barred by the statute of limitations. The exact amounts of reparation due can not be determined upon the present record, and complainants and intervener should prepare statements showing the details of their shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

Under the circumstances no order for the future will be entered.

THE NORTHWESTERN SALT CASES.

No. 8896.¹

PORTLAND TRAFFIC & TRANSPORTATION ASSOCIATION
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted December 19, 1916. Decided May 21, 1917.

Reasonable maximum rates prescribed for the transportation of salt from Portland, Oreg., and Seattle and Tacoma, Wash., to points in Oregon, Washington, Idaho, and Montana. Rates from Saltair, Utah, not shown to be unreasonable and complaint as to those rates dismissed.

Jos. N. Teal and *William C. McCulloch* for complainant in Docket No. 8896, and for interveners in Docket No. 8749.

S. J. Wettrick and *Jay W. McCune* for complainants in Docket No. 8963.

H. W. Prickett and *W. S. McCarthy* for complainant in Docket No. 8749.

H. A. Scandrett, J. F. Finerty, George H. Smith, Carey & Kerr, Charles Donnelly, George D. Squires, A. C. Spencer, and F. M. Dudley for defendants.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

These cases are related and will be disposed of together.

In Nos. 8896 and 8963, the traffic organizations of Portland, Oreg., and Seattle and Tacoma, Wash., assail as unreasonable the rates on salt in carloads from their respective cities to destinations in Oregon, Washington, Idaho, and Montana. The complaints are brought on behalf of wholesale jobbers at these points, hereinafter referred to as the port cities.

Salt is not produced locally at the port cities. The salt handled by jobbers at these cities originates at various places, but principally at points on San Francisco Bay in California, hereinafter referred to as bay points. The so-called standard or regular steamship lines charge 11.25 cents per 100 pounds for transporting salt from the bay points to the port cities, but tramp ships move it for 7.5 to 9 cents per 100 pounds. The all-rail rate is 20 cents.

¹ The proceeding also embraces complaints in No. 8963, Transportation Bureau of Seattle Chamber of Commerce et al. v. Northern Pacific Railway Company et al., and in No. 8749, Inland Crystal Salt Company v. Camas Prairie Railroad Company et al.

Salt is shipped in considerable quantities to the destination territory in question, and is used in the packing of meats and fish, the feeding of stock, and for dairying and general household purposes. It is usually shipped in bags. Dealers at the destination points sometimes require various kinds of salt, and it is shipped to them in mixed carloads by the jobbers.

The amount of salt shipped by the port city jobbers is, and in the past has been, rather limited. For the most part, the destination territory is supplied direct by producers located at the bay points and at Saltair, Utah, 13 miles from Salt Lake City, and the port city jobbers meet this competition. The business done by the two producing regions is probably equally divided between them. Kansas producing points also ship salt into this destination territory, but their shipments thereto are not heavy.

Joint through ocean-and-rail rates are maintained from the bay points to the destination territory in question. These rates apply via the standard or regular steamship lines as far as the port cities and via defendants' lines beyond. They are based on a differential of 10 cents over defendants' local rates from the port cities, and divide by allowance to the steamship lines of their local rates. For instance, the rate from the port cities to Spokane is 27.5 cents and the rate from the bay points to Spokane is 10 cents higher, or 37.5 cents, out of which the steamship line receives 11.25 cents and the rail line 26.25 cents. There are all-rail rates from the bay points, which are based on a differential of 3 cents per 100 pounds over the ocean-and-rail rates, the rate to Spokane being 40.5 cents. The rates from the bay points include an allowance of 50 cents per ton, which accrues to the producers at the bay points, for transfer by them in barges across San Francisco Bay to the terminals of the carriers. Most of the traffic from the bay points moves via the ocean-and-rail routes. The joint through rates from Saltair to Spokane and a number of the other destination points are maintained at the same figure as applies all rail from the bay points. Owing to the water competition the all-rail rates from the bay points are relatively lower, distance considered, than those from Saltair.

It is to the advantage of defendants to hold their rates from the port cities to the interior on as high a level as they reasonably can. They naturally object to any reduction in these rates because they constitute the key to the situation. Such a reduction would very likely reduce the joint through rates via ocean and rail from the bay points. Moreover, if the fixed relation which exists between the ocean-and-rail rates and the all-rail rates from the bay points, and between these and the rates from Saltair, should be continued, the entire system of salt rates would be brought to a lower level.

The jobbers at the port cities can buy salt from the bay point producers in large quantities at a low price and have facilities for storage. These jobbers feel that if substantial reductions in the rates from the port cities to the interior are accorded, with their ability to make prompt deliveries they can enlarge their distributing territory and secure some of the business now enjoyed by the producers at Saltair and the bay points. The Inland Crystal Salt Company, of Saltair, intervenes and asks that its interests be considered if any reduction is made in the rates from the port cities. The Public Service Commission of Oregon which at the time of the hearing had pending before it a proceeding instituted on its own motion involving the rates from Portland to points in the state of Oregon intervened, but offered no evidence.

The rates from the several port cities are generally the same. The following table shows the present rates, the rates asked to representative points, earnings, and distances from Portland:

Destination.	Distance.	Present rates.				Rates asked.			
		Rates.	Earnings.			Rates.	Earnings.		
			Per car.	Per car-mile.	Per ton-mile.		Per car.	Per car-mile.	Per ton-mile.
	Miles.	Cents.		Cents.	Mills.	Cents.		Cents.	Mills.
Pendleton, Oreg.....	218	1 22.5	\$90.00	41.28	20.64	12	\$48.00	22.02	11
Walla Walla, Wash.....	243	1 22.5	90.00	37.04	18.52	13	52.00	21.40	10.7
Lewiston, Idaho.....	355	1 27.5	110.00	30.99	15.49	16	64.00	18.03	9
Spokane, Wash.....	370	1 27.5	110.00	29.73	15.07	17	68.00	18.37	9.2
Weiser, Idaho.....	414	2 35	140.00	33.80	16.90	19	76.00	18.36	9.2
Boise, Idaho.....	493	2 39	155.00	31.65	15.82	21	84.00	17.04	8.5
Mountain Home, Idaho.....	528	2 42	168.00	31.80	15.90	23	92.00	17.43	8.7
Missoula, Mont.....	634	2 40	160.00	25.20	12.61	25	100.00	15.77	7.9

¹ From one-half cent to 3½ cents below class C.

² Equals class C rate.

³ Equals class D rate.

NOTE.—Tariffs containing rates to Weiser, Boise, and Mountain Home provide carload minimum of 37,500 pounds; but for comparative purposes earnings shown are computed throughout on car loading of 40,000 pounds.

In *Railroad Commissioners of Kansas v. A., T. & S. F. Ry. Co.*, 22 I. C. C., 407, we said:

Salt is very desirable traffic from a transportation standpoint. It loads heavily, is not liable to loss or damage in transit, can be handled at the convenience of the carrier, and affords a uniform business. * * * it is an article of universal and necessary consumption. All these considerations call for a low rate of transportation, and have been repeatedly recognized by the Commission.

Salt is rated class C in western classification, and the carload minimum applicable is 37,500 pounds. The rates from the port cities are commodity rates, in some cases equal to the class C rates, but generally a few cents lower, and to some points in Montana are on the class D basis. Under the commodity tariffs the minimum is generally 40,000 pounds. Prior to February 20, 1915,

exceptions to the classification were applied to this traffic and in a number of cases class D rating was thereby provided. Class D rates now apply on salt in Wisconsin and Minnesota, also between points in Kansas and Nebraska, and quite generally in Pacific coast states, where no commodity rates are published. The class rates from the port cities are equal to or lower than those which resulted from the Commission's decision in *Portland Chamber of Commerce v. O. R. R. & N. Co.*, 21 I. C. C., 640.

Complainants have shown that the ton-mile and car-mile earnings produced by the present commodity rates very greatly exceed the average ton-mile and car-mile earnings of the principal defendants on all traffic for fairly comparable average hauls. For example, the present rate of 27.5 cents to Spokane produces ton-mile earnings of approximately 15 mills for a distance of 370 miles and car-mile earnings of 30 cents. For the fiscal year ended June 30, 1915, the average ton-mile earnings on the lines of the principal defendants for average hauls are given as follows: Northern Pacific Railway, 8.49 mills for 293 miles; Great Northern Railway, 8.166 mills for 246.18 miles; Chicago, Milwaukee & St. Paul Railway, 8.713 mills for 357.43 miles. The car-mile earnings for these respective roads were 16.26, 17.62, 13.15, and 15.83. Rates to Spokane, based on the average ton-mile and car-mile earnings on all traffic of the Union Pacific system, would be 17.9 cents and 14.52 cents, respectively. The Oregon-Washington Railroad & Navigation Company objects to testing the reasonableness of its rates by the use of Union Pacific system statistics. If the statistics of the Oregon-Washington Railroad & Navigation Company are used rather than those of the entire Union Pacific system, the figures will be more favorable to the defendants.

Complainants show in numerous exhibits that the rates on salt prescribed by the Commission under all kinds of traffic and transportation conditions from producing points in various parts of the country during the past several years are much less than the class rates that would apply between the same points in the absence of commodity rates. According to complainants' figures, the commodity rates on salt prescribed by the Commission average 60 per cent of the class rates. The jobbers at the port cities contend that they should be regarded as producers of large quantities of salt, and that if producing points generally have been given rates which are materially lower than the class rates, the port city jobbers should be accorded the same treatment. They claim the right to bring their salt from any source of origin and via such routes as they see fit, and contend that the fact that salt is not produced at the port cities should not enter into the question of what are reasonable rates.

They attribute their inability to do business in this territory largely to the fact that the producers at the bay points can ship over their heads, the joint through rates being somewhat less than the combinations on the port cities. They desire to have the rates break on the port cities, but it is not clear that if the rates from the port cities were reduced, the rates from the bay points would be made on combination. In any event, several years ago, when there were no joint through rates from the bay points, i. e., when the rates broke on the port cities, complainants' business apparently was as light as it is now.

The Oregon-Washington Railroad & Navigation Company, to whom practically the entire defense of the case was left, puts forward, as a reason for opposing a reduction of the rates, that it has many costly and unprofitable branch lines. It also cites the unsatisfactory financial condition of the road.

There is a boat line operating on the Columbia and Snake rivers between Portland, Oreg., and Lewiston, Idaho. Its rates on salt range from 7.5 cents to 17.5 cents, dependent upon distance. Competition with this line has depressed rates to a few points. Defendants call attention to the fact that the rates complainants ask to the various destinations in question are relatively as low as or lower than the rates of the boat line.

In No. 8749 a producer at Saltair assails as unreasonable the rates on salt from that point to destinations in Oregon, Washington, Idaho, Montana, and Wyoming. The complaint was filed several months before those in the port cities cases.

This complainant's salt ponds and salt works are situated upon the shores of Great Salt Lake near Saltair. Water which contains about 15 per cent salt is pumped from the lake into a series of shallow ponds covering a large acreage of ground naturally adapted to the manufacture of salt by the process of solar evaporation. The amount of salt complainant could produce is practically unlimited. During the year 1915 its production was something over 41,000 tons, more than half of which went to the destination territory involved.

Complainant at Saltair meets competition from salt-producing points in Kansas, also from the bay points, and, of course, to a very limited extent from the port cities. A blanket rate of 50 cents applies to all the destinations involved from points in Kansas. We have heretofore stated that the rates from the bay points, all rail, to the destinations herein mentioned are generally equal to the rates from Saltair. Complainant's principal competition in the northwest territory in Oregon and Washington is with the bay points. If lower rates from Saltair were established, the complainant states that it would be enabled to enlarge its distributing territory and increase its output. This result would presumably be at the expense of certain

carriers and competing producers. It would hardly result in a notably greater consumption.

The Portland Traffic & Transportation Association and six producers of salt at the bay points have intervened in No. 8749 to protect their interests as they might appear to be affected.

The present rates from Saltair to representative points of destination as well as the rates asked for by complainants are shown in the following table. The distances and the car-mile and ton-mile earnings are also shown:

Destination.	Dis- tance.	Present rates.				Rates asked.			
		Rate.	Earnings.			Rate.	Earnings.		
			Per car.	Per car- mile.	Per ton- mile.		Per car.	Per car- mile.	Per ton- mile.
	<i>Miles.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
Pocatello, Idaho.....	185	24	\$96	51.89	2.59	17.70	\$70.80	38.27	1.91
American Falls, Idaho.....	210	30	120	57.14	2.86	18.80	75.20	35.80	1.79
Kemmerer, Wyo.....	313	30	120	38.34	1.92	21.70	86.80	27.73	1.39
Butte, Mont.....	447	30	120	26.85	1.34	25.10	100.40	22.46	1.12
Boise, Idaho.....	449	30	120	26.73	1.34	26.60	106.40	23.70	1.18
Huntington, Oreg.....	511	30	120	23.48	1.17	25.13	100.52	19.67	.98
Pendleton, Oreg.....	685	35.5	142	20.73	1.02	27.05	108.20	15.80	.79
Walla Walla, Wash.....	731	35.5	142	19.43	.96	27.48	109.92	15.04	.75
The Dalles, Oreg.....	816	40	160	19.61	.98	28.05	112.20	13.75	.69
North Yakima, Wash.....	854	37.5	150	17.57	.88	30.75	123.00	14.40	.72
Spokane, Wash.....	899	40.5	162	18.02	.90	28.45	113.80	12.66	.63
Portland, Oreg.....	903	35	140	15.50	.78	28.50	114.00	12.62	.63
Seattle, Wash.....	1,084	35	140	12.92	.65	29.60	118.40	10.92	.55
Grants Pass, Oreg.....	1,200	62	248	20.67	1.03	35.00	140.00	11.67	.58

The present rate to Grants Pass, which is on the line of the Southern Pacific Company, about 300 miles south of Portland, is based on the Portland combination. The present rates to Portland and Seattle are lower than to Spokane, notwithstanding the greater distances to the former. This is due to the fact that lines from Saltair meet the rates from the bay points. The distances from the bay points to these destinations are less than from Saltair, the movement is largely by water, and the rates therefrom are normally lower.

The rates from the bay points also hold down the rates from Saltair to Spokane, Pendleton, and other points, and the rates from Saltair to points intermediate are graded down. The 30-cent rate to American Falls, Butte, and other points is blanketed over a territory several hundred miles in extent. It was established some years ago to meet the wishes of stock raisers who purchased their salt from complainant.

The rates from Saltair, particularly for the longer distances, are considerably below the class C rates, and as a rule materially below the class D rates, and are therefore relatively lower than the rates from the port cities. The present rates from Saltair to Spokane and some of the other points represent increases over the rates in effect

prior to October, 1915, when the class D basis from the port cities was abandoned.

The scale of class rates from Salt Lake City to the territory in question is substantially that which applies from the port cities. The carload rates on salt and practically all other commodities are 5 cents per 100 pounds higher from Saltair than from Salt Lake City. Defendants admit that there could be no great objection to according the port cities relatively the same rates as are contemporaneously maintained from Saltair if the port cities were producers of salt.

The rates asked for are in accordance with a distance table prepared by complainant's traffic manager. His table is based on one-line hauls. Where hauls over two or more lines are involved he has added for each additional line an arbitrary of 2.5 cents. In arriving at rates to points on branch lines an arbitrary of 2.5 cents is added to the rate applying to the junction of the main line with the branch line.

Saltair is on the Salt Lake & Los Angeles Railway, a subsidiary of the complainant corporation having a connection with the Oregon Short Line at Salt Lake City. Shipments from Saltair to the destinations in question, therefore, involve hauls over at least two lines. The first six points named in the table on page 17 are on the Oregon Short Line. Boise is an example of the branch-line points. The points other than the first six are reached by the Oregon Short Line through its various connections.

A large amount of statistical data and numerous rate comparisons were offered in evidence by complainant to prove that the rates it pays are unreasonable. It shows that the rates asked for average nearly 70 per cent greater than the average of the rates on salt from Detroit, Mich., to 18 points, practically all of which are east of the Missouri River and most of which are east of the Mississippi River; more than 25 per cent greater than the average of the rates on salt from Kansas producing points to 30 destinations in various directions in western states; about 17 per cent greater than the average of 50 or more rates on salt from various far western producing points, including Saltair and San Francisco Bay, to points in 5 far western states; more than 32 per cent greater than the average of 29 rates on plaster from producing points in the far west to destinations through the west; about 30 per cent greater than the average of 35 rates on coal from Idaho and Wyoming mines to points in the far west and northwest; and about 20 per cent greater than the average of 30 rates between points in the far west on brick, lime, tile, sulphur, cement, phosphate rock, asphalt, coke, and rags. It will serve no useful purpose to set forth all of these comparisons in detail. They are all of similar import. Complainant testified that the rates used

in the comparison were selected at random and without particular regard to their measure or intrinsic reasonableness. They apply for distances substantially equal to those from Saltair to the destinations involved, namely, from about 100 to 1,200 miles. The statistical data were offered to prove that defendants could well afford to maintain rates as low as or lower than many of the lines whose rates were used in comparison. There is more or less of a movement of empty cars toward the destinations in question.

Defendants show that while the rates from Saltair to points in Idaho from 400 to 500 miles distant are 30 cents, the rates from the bay points to points in Oregon for the same distances range from 1.5 to 5.5 cents higher. The rates assailed compare favorably with the rates from Saltair to points of destination farther east in Wyoming, Nebraska, South Dakota, and Montana, and from Kansas to points in Wyoming; and for short distances, namely, from 100 to 250 miles, they are lower than apply in California from the bay points. They also compare favorably with the rates from the bay points to points on the Southern Pacific in California, Oregon, New Mexico, and Arizona. The rates to Portland are depressed by water competition from the bay points, and the rates south of Portland are based on the Portland combination.

Defendants went into great detail in showing the difficulties of operation which they meet on their lines north of Ogden, Utah.

In considering the rate comparisons offered by both parties, due regard must be had for the fact that many of the rates are not made with particular reference to distance but have been established to meet varying commercial and competitive conditions. They are, therefore, not as helpful as they might otherwise be. While the rates appear to be based, as one of defendants' witnesses admitted, on what the traffic will bear, the present alignment of rates seems to represent the carriers' best efforts to adjust the situation to the satisfaction of all the parties here concerned, but more particularly the Saltair and bay point producers, without loss of revenue to themselves.

There is not sufficient substance and definiteness to complainant's evidence to warrant the radical reductions sought. We are of opinion that the rates on salt from Saltair here attacked are not shown to be unreasonable; the individual instances of increased rates since January 1, 1910, resulting in rates lower than class C and generally lower than class D we find justified; and the complaint in that case will be dismissed. We find, however, that the rates on salt from the port cities are and for the future will be unreasonable to the extent that they exceed the class D rates contemporaneously in effect. Orders will be entered in accordance with our findings.

No. 8640.
EDWARDS & LOOMIS COMPANY
v.
PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted April 26, 1916. Decided May 1, 1917.

Rates on poultry feed in carloads from Chicago, Ill., to Indianapolis, Ind., and to Ohio River crossings shown to have been unreasonable. Reparation awarded.

A. J. Killen for complainant.

L. E. Hinkle for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; Pennsylvania Company; and Vandalia Railroad Company.

D. P. Connell for New York Central Railroad Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; and Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

The complainant, a corporation engaged in the manufacture of poultry feed at Chicago, Ill., alleges that the rates charged for the transportation of numerous carload shipments of that commodity from Chicago to Indianapolis, Ind., and to certain Ohio River crossings between February 8, 1912, and June 16, 1915, were unreasonable and unjustly discriminatory to the extent that they exceeded the rates contemporaneously in effect on live-stock feed. Reparation is asked. The allegation of unjust discrimination was subsequently withdrawn. The defendants admit that the rates charged were unreasonable and express of record their willingness to make reparation on the basis claimed. The application of higher rates on poultry feed is said to have been due to an error in compiling the tariffs.

Within central freight association territory poultry feed usually takes the same rates as mixed live-stock feed, and both are usually classed as by-products of grain. During most of the period in question the rates on poultry feed from Chicago to the destinations named were 2 cents per 100 pounds higher than the rates on live-stock feed and other commodities classified as by-products of grain. Prior to January 8, 1914, the rate on poultry feed from Chicago to

Cincinnati, Ohio, and a number of other Ohio River points was 10 cents per 100 pounds, the rate on live-stock feed being 8 cents. On the date named both of these rates were increased by 1 cent per 100 pounds. *Grain Rates in Central Freight Association Territory*, 28 I. C. C., 549. The complainant claims reparation on the basis of a rate of 8 cents prior to the increase, and on the basis of a rate of 9 cents subsequent to the increase. Effective July 1, 1914, the rates on both poultry feed and live-stock feed were reduced to 8 cents per 100 pounds, which rate is still in effect. The present rates being satisfactory to the complainant, the only question to be decided is whether or not the complainant is entitled to reparation on the shipments made prior to the reduction of the rate.

Complainant's principal witness admits that the rate of 10 cents per 100 pounds would probably not have been deemed excessive if the rate on live-stock feed had also been 10 cents. Based on a distance of 299.7 miles from Chicago to Cincinnati, Ohio, via Logansport and Richmond, Ind., the rate of 10 cents yielded a revenue of 6.67 mills per ton-mile. Assuming the average loading to have been 42,430 pounds the earning per car-mile via that route was 14.15 cents. The distance via the Chesapeake & Ohio Railway of Indiana is 14.4 miles shorter, but it is not shown that any of the shipments moved over this route.

The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, one of the defendants, applied to this Commission in November, 1914, for authority to make refund to the complainants on 72 of the shipments in question. The printed form contained an admission that the rates charged were unreasonable, but the basis set forth in the typewritten explanation was that "the rates charged on poultry feed were *discriminatory* to the extent that they exceeded the rates contemporaneously in effect on mixed live-stock feed." The Commission denied the application and the complainant was so advised under date of February 27, 1915. As the formal complaint was not filed until February 7, 1916, numerous shipments which moved prior to February 7, 1914, are barred under the provision of rule III of the Commission's Rules of Practice. *Detroit Stove Works v. Wabash R. R. Co.*, 39 I. C. C., 597, and cases there cited.

Upon consideration of all the evidence of record we find and conclude that the rates in question are shown to have been unreasonable to the extent that they exceeded the rates on live-stock feed in effect during the period of movement. We further find that complainant made the shipments as described and paid and bore charges thereon at the rates herein found to have been unreasonable; that it was

damaged to the extent that the charges collected exceeded the charges that would have accrued at the rates herein found to have been reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. It should not include any shipments barred by the rule above referred to. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

HARLAN, *Commissioner*, dissenting:

The conclusions reached by the majority seem to rest upon the fact that the 10-cent rate on poultry feed was higher by 2 cents than the rate contemporaneously maintained on live-stock feed. The rate yielded but 6.67 mills per ton-mile and 14.15 cents per car-mile; and it affirmatively appears of record that it was afterwards reduced by the defendant carriers to 8 cents, not because they deemed the 10-cent rate unreasonable in and of itself, but because 8 cents was the rate for poultry feed from St. Louis and they thought it desirable, for competitive reasons, to keep the rates from Chicago and St. Louis on a parity. No showing of discrimination was made on the record; in fact that allegation, although first made, was later withdrawn by the complainant. As a whole the evidence presented lacks any real proof that the rates paid were unreasonable *per se*. In my judgment there should be a very definite showing, when discrimination is not claimed, that a rate is unreasonable in and of itself before reparation is awarded.

I am requested by my brother DANIELS to state that he concurs in this view of the case.

HALL, *Chairman*, also dissents.

45 I. C. C.

No. 8723.

ABERDEEN WHOLESALE GROCERY COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted September 13, 1916. Decided April 28, 1917.

Rate on a carload of dried fruit from San Francisco, Cal., to Aberdeen, S. Dak., found to have been unlawful. Reparation awarded.

A. J. Branscom for complainant.

William G. Porter for Chicago, Milwaukee & St. Paul Railway Company and Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale grocery business at Aberdeen, S. Dak. By complaint, filed March 13, 1916, it alleges that the rate of \$1.10 per 100 pounds charged by defendants for the transportation of a carload of dried fruit in boxes, shipped October 6, 1913, from San Francisco, Cal., to Aberdeen, was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded a rate of 90 cents subsequently established. A violation of the long-and-short-haul rule of the fourth section is also alleged. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipment weighed 74,180 pounds and moved: Southern Pacific Company to Ogden, Utah; Union Pacific Railroad to Omaha, Nebr.; Chicago, Milwaukee & St. Paul Railway to destination. Charges were collected in the sum of \$815.98 at a commodity rate of \$1.10, legally applicable.

For many years a rate of \$1.10, minimum 40,000 pounds, has applied on dried fruit in boxes from San Francisco and other Pacific coast points to Aberdeen and other points in North and South Dakota, to Minneapolis and St. Paul, Minn., hereinafter called the twin cities, and to eastern points. Effective August 21, 1915, a commodity rate of 90 cents, minimum 60,000 pounds, was published to the twin cities and eastern points, but apparently through oversight this rate was not published to Aberdeen and other points in North Dakota, South Dakota, and western Minnesota.

It appears that traffic from San Francisco to the twin cities can and does move through Aberdeen. The establishment of the 90-cent rate to the twin cities and not to Aberdeen created a violation of the fourth section as to shipments weighing 60,000 pounds or more. On October 25, 1915, the 90-cent rate, minimum 60,000 pounds, was also established to Aberdeen and other points. On December 30, 1916, this rate was increased to \$1, the present rate.

Complainant shows that its shipments weighed 60,000 pounds or over; that its strongest competition is from the twin cities; that Aberdeen has for a long time been accorded the same rates from San Francisco as have the twin cities on the commodity involved; and that this equality in rates is made necessary by commercial conditions. On March 1, 1917, the 90-cent rate to the twin cities and eastern territory was increased to \$1.

Defendants contend that the \$1.10 rate was not unreasonable *per se*, but state that it has always been their intention to keep the twin cities and Aberdeen on the same rate basis from the territory mentioned for the reason that they are competitive jobbing points. A willingness to pay reparation on this basis was evidenced.

Upon the facts disclosed we find that the rate charged was unlawful to the extent that it exceeded 90 cents per 100 pounds, minimum 60,000 pounds. We further find that complainant made the shipment as described and paid and bore the charges thereon, that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on basis of the rate herein found lawful; and that it is entitled to reparation in the sum of \$148.36, with interest.

An order awarding reparation will be entered. No order for the future is necessary.

DANIELS, *Commissioner*, dissents.

No. 8226.¹

GLOBE SOAP COMPANY

v.

ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

Submitted December 9, 1916. Decided May 5, 1917.

Rates for the transportation of cottonseed oil, soap stock, tank bottoms, and inedible tallow in carloads from points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas to Ivorydale, St. Bernard, and Cincinnati, Ohio, increased in June, 1915, in conformity with the findings in *The Five Per Cent Case*, 32 I. C. C., 325, held upon further hearing to be unduly prejudicial.

Frank Van Slyck for Globe Soap Company.

William H. McGuffey for Procter & Gamble Company.

Fred G. Wright, F. A. Leland, O. S. Lewis, R. D. Williams, T. J. Norton, Fred H. Wood, W. F. Dickinson, Wallace T. Hughes, Henry G. Herbel, Thomas Bond, C. S. Burg, James B. Coffey, and J. W. Clark for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, Commissioner:

This proceeding is supplemental to that of the same title reported in 40 I. C. C., 121. The rates involved apply on cottonseed oil, soap stock, tank bottoms, and inedible tallow in carloads from points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas to Ivorydale, St. Bernard, and Cincinnati, Ohio. Ivorydale and St. Bernard are within the Cincinnati switching district and take Cincinnati rates. The rates assailed are rates increased June 23 and 28, 1915, in conformity with the permission given by the Commission in *The Five Per Cent Case*, 32 I. C. C., 325, 331, as follows:

Joint rates between official classification territory on the one hand, and southeastern territory, the southwest and points on or east of the Missouri River on the other, may be increased not to exceed 5 per cent of the division of the rate accruing to the carriers in official classification territory.

The defendants, relying wholly upon the above-quoted permission of the Commission, offered no evidence at the first hearing. But, as we stated in our original report:

The permission given in *The Five Per Cent Case*, *supra*, was necessarily general. That case did not approve any specific rate as reasonable in itself or as properly adjusted with respect to other rates, nor did it justify in advance

¹ The proceeding also embraces complaint in No. 8226 (Sub-No. 1) Procter & Gamble Company v. Same.

any rate which might be published as a result thereof. The act casts upon the carrier the burden of proof to show that a rate increased after January 1, 1910, is just and reasonable and that burden is not removed by a general permission of the Commission, such as that relied upon by the defendants, for it is the total rate which must be justified and not the amount of the increase. Under the law the burden in this case was upon the defendants to show that the rates complained of were just and reasonable. They have failed to sustain that burden.

In view of defendants' reliance upon *The Five Per Cent Case*, however, and their consequent failure to offer any evidence in justification of the rates, the case was assigned for further hearing and an opportunity accorded them to prove the reasonableness and propriety of the rates in issue.

As was pointed out in our original report, complainants compete with manufacturers of soap at Chicago, Ill., St. Louis, Mo., and other points, and their complaints are grounded mainly on the fact that, although the rates to Cincinnati were increased, defendants did not increase the rates to the points at which their competitors are located. They allege that defendants have thus disturbed an adjustment of long standing and contend that the additional expense to which they have been subjected, amounting to from \$2.75 to \$13.75 per car, constitutes an undue discrimination against them, for which they ask reparation.

Defendants' chief reliance at the second hearing, as at the first, was on *The Five Per Cent Case*, which authorized increases approximating 5 per cent on classes and certain commodities moving in official classification territory. Since joint rates between points in the southwest and points in central freight association territory are usually constructed by the addition of differentials applying to or from St. Louis or by the combination of the separately established rates to and from the Ohio and Mississippi river crossings, the Commission, by supplemental orders of November 28 and December 23, 1914, entered in *The Five Per Cent Case*, authorized increases in such rates in amounts not to exceed 5 per cent of the customary divisions accruing to the carriers operating in central freight association territory. Joint rates between the southwest and Cincinnati were thereupon increased approximately 5 per cent of the divisions accruing between St. Louis and Cincinnati, but although the local rates between St. Louis and Chicago were increased the joint rates between the southwest and Chicago were not increased.

Traffic from the southwest to Chicago may or may not pass through central freight association territory depending on the river crossing through which it moves. The same is true of traffic to Cincinnati. The rates on cottonseed oil and the other commodities herein under consideration to Cincinnati are applicable by way of Memphis, Tenn., and other Mississippi River crossings north thereof

and from many points in the southwest they are also applicable through crossings south of Memphis. The routes through Memphis, which complainants show are usually shorter than those through other crossings, do not traverse central freight association territory. The complainants contend, therefore, that there was as much justification for increasing the cottonseed oil rates to Chicago as for increasing them to Cincinnati, and that defendants' failure to increase the Chicago rates has resulted in undue prejudice to Cincinnati.

At neither the original nor the supplemental hearing did the defendants attempt to justify their failure to increase the rates to Chicago when the rates to Cincinnati were increased, other than by the assertion that Chicago was not in central freight association territory and that the lines operating between Chicago and the river crossings had demanded no increases in their divisions. The record clearly shows that the only purpose in increasing the Cincinnati rates was to comply with the requirements of carriers operating in central freight association territory for the increased divisions authorized in *The Five Per Cent Case*. If those demands had not been made no increases would have been made in the Cincinnati rates.

Defendants insist that the Commission expressly permitted the increased rates to Cincinnati with no corresponding increases to Chicago by its Fourth Section Order No. 4579 of December 26, 1914, authorizing a revision of the joint rates between points in southwestern tariff committee territory and points in central freight association territory to correspond with the advances made under the findings in *The Five Per Cent Case* without observing the long-and-short-haul provision of the fourth section. But we specifically stated therein that—

The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any provision of the act.

And in *Procter & Gamble Distributing Co. v. A. & V. Ry. Co.*, 40 I. C. C., 367, which dealt with rates on soap, soap powder, and lard substitute from Ivorydale, St. Bernard, and Kansas City, Mo., to points in Louisiana, we said, page 371:

It is insisted by the complainants that the discrimination against Cincinnati is clear, since rates from Cincinnati via direct routes through the lower Mississippi River crossings are divided on percentages; and that the traffic via those routes does not traverse central freight association territory. It is also pointed out that the rates from Cincinnati were increased, and the rates from Chicago were not increased, notwithstanding the fact that local rates from Chicago to St. Louis were increased, and that so far as divisions are concerned the situation at Chicago and Cincinnati is substantially similar. The defendants did not attempt to justify their failure to increase the rates from Chicago territory when the rates were increased from Cincinnati. They state that they relied

wholly upon *The Five Per Cent Case*. There is nothing in the findings of the Commission in that case that is justification for the defendants to disarrange the relative adjustment of the through rates from Chicago and Cincinnati to Louisiana points which had been maintained for many years. When an important and long-standing relation, such as is here involved, is sought to be changed by carriers, justification therefor must be clear and convincing. There is no such justification in the record.

The evidence relating to the reasonableness of the rates to Cincinnati was confined principally to the rates on cottonseed oil, but was intended to include as well the rates on soap stock, tank bottoms, and inedible tallow. The defendants submitted exhibits setting forth the rates on cottonseed oil from many points in the southwest to Cincinnati and Chicago, the short-line distances, and the revenues per ton-mile and per car-mile. They compare these rates with the class rates applying between the same points and with rates on certain other commodities such as merchant iron, soap, canned goods, etc., applying generally in the reverse direction. By these comparisons they seek to establish the fact that the rates to Cincinnati are reasonable *per se*.

The following table has been compiled from the exhibits relied upon by defendants to establish the reasonableness of the rates involved. The car-mile earnings have not been included, as they were in all cases predicated on 100 per cent empty car mileage. The propriety of that basis is disputed by complainants who contend that because the movement of crude cottonseed oil is in tank cars it does not necessarily follow that the empty mileage is 100 per cent of the loaded mileage. See also 39 I. C. C., 507. No investigation was made by defendants to determine the correctness of the basis employed.

From—	Rates per 100 pounds to—			Short-line mileages to—		Revenue per ton-mile to—		Fifth-class rate to—	
	Cincinnati.		Chicago through rate.	Cincinnati.	Chicago.	Cincinnati.	Chicago.	Cincinnati.	Chicago.
	Through rate.	Lowest combination.							
Louisiana:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>			<i>Mills.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Cents.</i>
Monroe.....	31.5	35.5	32	1 733	1 774	8.6	8.3	72.7	72
Alexandria.....	34.5	37.5	34	1 830	1 871	8.3	7.8	72.7	72
Shreveport.....	31.5	35.5	32	1 833	1 848	7.6	7.5	72.7	72
Texas:									
Paris.....	41.5	45.5	41	1 868	1 862	9.6	9.5	82.7	82
Mincola.....	41.5	45.5	41	1 913	1 904	9.09	9.07	82.7	82
Dallas.....	41.5	45.5	41	1 971	1 967	8.5	8.5	82.7	82
Waco.....	41.5	45.5	41	1 1,035	1 1,027	8.0	7.9	82.7	82
Abilene.....	41.5	45.5	41	1 1,182	1 1,126	7.0	7.3	82.7	82
Arkansas:									
Little Rock.....	24.5	28.5	24	1 627	1 629	7.8	7.6	44.7	44
Fort Smith.....	28.5	30.5	28	1 757	1 690	7.5	8.0	51.7	51
El Dorado.....	28.5	32.5	28	1 758	1 775	7.5	7.2	60.7	60
Oklahoma:									
Muskogee.....	36.5	38.5	31	1 772	1 698	9.5	8.9	83.8	83
Oklahoma City.....	40.5	40.5	35	1 880	1 787	9.2	8.9	78.8	78
Frederick.....	40.5	40.5	35	1 1,020	1 974	7.9	7.2	60.8	60

Via Memphis.

Via St. Louis.

Via Kansas City.

The above table shows that the rates to Cincinnati, except from points in Oklahoma, are less than the lowest combination of intermediate rates, are in all cases materially lower than the fifth-class rates which would apply in the absence of commodity rates, and yield per ton-mile revenues averaging slightly in excess of those accruing on traffic from the same points of origin to Chicago. These comparisons in themselves, however, are not conclusive of the reasonableness and propriety of the increased rates to Cincinnati. Substantially the same results in ton-mile earnings would have been obtained under the rates in effect prior to the time the increases were made. Moreover, the same showing could with equal or greater propriety be urged in support of increases in the rates on cottonseed oil to Chicago.

Defendants also compared the rates from Monroe, Alexandria, and Shreveport to Cincinnati with rates based on the mileage scale prescribed in *Oklahoma Cottonseed Crushers' Assn. v. M., K. & T. Ry. Co.*, 39 I. C. C., 497, for the transportation of cottonseed oil from points in Oklahoma to Kansas City, Mo. The scale of rates prescribed in that case did not extend beyond 600 miles and defendants have predicated their rates on the same relative increase per mile for distances in excess of 600 miles. It appears that the application of that scale would reduce the rate from Monroe $1\frac{1}{2}$ cents and from Alexandria $2\frac{1}{2}$ cents by way of the short route through Memphis, although it would result in an increase of one-half cent in the rate from Shreveport. The complainant employs the same scale on traffic from Texas and shows that in all cases its application would reduce the rates to Cincinnati in amounts varying between one-half cent and 9 cents.

It is unnecessary to review in greater detail the evidence adduced at the further hearing. Certain comparisons were made with the rates applying on cottonseed oil from points in Georgia and Alabama to Cincinnati, the purpose being to show particularly that the rates from Arkansas were not unreasonable. The rate of $24\frac{1}{2}$ cents from Little Rock to Cincinnati, for example, applying over a distance of 627 miles, was compared with a rate of 25 cents from Montgomery, Ala., to Cincinnati, approximately 600 miles. No attempt was made, however, to justify the disparity between the rates from Little Rock to Chicago and Cincinnati created by the readjustment of June, 1915. The distances by way of the shortest routes from Little Rock to both points are practically the same.

Upon the facts disclosed we find that the increased rates assailed are unduly prejudicial to Cincinnati, Ivorydale, and St. Bernard. We shall require the defendants to remove this undue prejudice by

the publication of rates to the points named which will not exceed those in effect immediately prior to June 23, 1915. The record does not contain sufficient proof of damage to complainants to justify an award of reparation and therefore none will be made.

An order will be entered in accordance with our findings herein.

No. 8425.

INTERNATIONAL PAPER COMPANY

v.

MAINE CENTRAL RAILROAD COMPANY ET AL.

Submitted May 4, 1916. Decided April 10, 1917.

Rate on news print paper shipped from Livermore Falls, Me., through Brunswick, Me., to Philadelphia, Pa., not found to have been unreasonable. Complaint dismissed.

J. H. Auchincloss for complainant.

Charles H. Blatchford for Maine Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing and selling paper, with its principal office at New York, N. Y., and a place of business at Livermore Falls, Me. By complaint, filed November 2, 1915, it alleges that the rate of 20 cents per 100 pounds charged by defendants on 94 carloads of news print paper shipped from Livermore Falls to Philadelphia, Pa., during the period from November 15, 1913, to January 30, 1914, inclusive, was unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved in accordance with complainant's routing instructions: Maine Central Railroad through Brunswick, Me., to Deering Junction, Me.; Boston & Maine Railroad to Northampton, Mass.; New York, New Haven & Hartford Railroad, hereinafter called the New Haven, to Harlem River, N. Y.; New York Harbor Transfer and either Pennsylvania Railroad or Central Railroad of New Jersey in connection with the Philadelphia & Reading Railway to destination. No joint through rate was in effect and charges were collected at point of origin on the basis of the legal combination rate of 20 cents, composed of a proportional rate of 3 cents to Brunswick

and a joint sixth-class rate of 17 cents beyond. The complaint is directed solely to the 17-cent component from Brunswick to Philadelphia, which complainant contends was unreasonable to the extent that it exceeded 15 cents.

Paper generally in carloads is rated fifth class in the official classification, but under exceptions to the classification, made by various carriers, the carload rating on certain kinds of paper, including news print paper, has been changed in many instances to sixth class. Prior to November 14, 1913, the sixth-class rate, applicable to news print paper, from Brunswick to that portion of trunk line territory east of a line drawn from a point a little south of Wilmington, Del., to Harrisburg, Pa., and thence northwesterly to Buffalo, N. Y., was 15 cents, under the so-called Buffalo scale of class rates ranging from 44 cents first class to 15 cents sixth class. This rate applied by various routes, but to Wilmington and points east thereof, including Philadelphia, applied only in connection with the New Haven by way of Harlem River. On the date named the class rates to all points in the above-described territory by way of Harlem River were placed on the so-called Pittsburgh scale of 50 cents first class to 17 cents sixth class. The present sixth-class rate is 17.8 cents, representing an increase of 5 per cent under the authority of *The Five Per Cent Case*, 32 I. C. C., 325. Effective March 10, 1914, after the shipments moved, defendants established a commodity rate of 15 cents on news print paper from Brunswick to Philadelphia by way of Harlem River. This rate was subsequently increased under the authority of *The Five Per Cent Case*, *supra*, to 15.8 cents, the present rate.

The Maine Central Railroad was the only defendant represented at the hearing and assumed the burden of justifying the rate charged. Its witness testified that the increase in the sixth-class rate was for the purpose of eliminating certain fourth section departures and that it was a part of a general readjustment of class rates within and from New England. It is explained that a sixth-class rate of 15 cents applicable on this traffic was continued in effect to Philadelphia from near-by points competitive with Brunswick, served by the Boston & Maine Railroad, and that in order to meet this competition the 15-cent commodity rate was established from Brunswick.

Complainant contends that it was the intention of defendants, as indicated by supplement No. 10 to Maine Central Railroad's tariff I. C. C. No. C-1230, to establish the 15-cent commodity rate effective January 16, 1914, but that through an error in compiling the tariff this rate was not properly published and made effective from Brunswick to Philadelphia until March 10, 1914. It is apparent from an examination of the tariff that complainant's contention is correct, but the failure of defendants to carry out their intention and the

subsequent reduction of the rate alone are insufficient to establish the unreasonableness of the rate assailed.

Philadelphia is about 516 miles from Brunswick by the route of movement, allowing 60 miles for constructive mileage in New York harbor, and the rate charged yielded 6.6 mills per ton-mile. The ton-mile revenue under the 15-cent rate was 5.81 mills. Complainant introduced a statement showing rates of from 13 cents to 16 cents applicable on news print paper from various points in New York to Philadelphia. A sixth-class rate of 15 cents applied from certain competitive producing points on the Delaware & Hudson in northern New York and yielded about 7 mills per ton-mile for a distance of about 425 miles.

In *Official Classification Rates on Paper*, 38 I. C. C., 120, the carriers, with a view to eliminating certain inconsistencies and securing uniformity in the rate adjustment as to paper, proposed to readjust the rates on most kinds of paper within official classification territory on the sixth-class basis. Respondents therein stated that large quantities of paper had been moving from New England on fifth-class rates and that the New England lines had agreed unwillingly to a reduction of those rates in order to make the whole adjustment uniform. With certain exceptions we there approved the general application of sixth-class rates. Certain departures from the general scheme were involved with respect to the rates on news print paper. In dealing with the rates from New England and northern New York to points in central freight association territory the respondents admitted that news print paper is readily distinguishable from other kinds of paper and that it is entitled to lower rates, and we found reasonable a rate somewhat lower than sixth class. In one of the formal cases, the so-called New England complaint, decided in connection with our report in the above proceeding, the respondents stated that they were not prepared to defend certain features of the existing adjustment of rates on paper from New England and northern New York to Philadelphia, Pa., Baltimore, Md., Washington, D. C., and Richmond, Va., and all the interested parties having expressed a desire that the carriers be given an opportunity to correct the alleged maladjustment, no finding was made as to the propriety of those rates. They are now in the process of readjustment.

The complaint in this proceeding contains no allegation of discrimination and we find that the rate charged was not unreasonable. The complaint will be dismissed.

HALL, *Chairman*, and DANIELS, *Commissioner*, dissent.

No. 9102.
COMMERCIAL CABLE COMPANY
v.
WESTERN UNION TELEGRAPH COMPANY.

Submitted January 2, 1917. Decided May 21, 1917.

1. Defendant's refusal to transmit for complainant from New York to points in the United States deferred cable messages originating in South America, upon the same terms as such deferred cable messages are contemporaneously transmitted by the defendant under like conditions for complainant's competitor, the Central & South American Telegraph Company, subjects complainant to unjust discrimination.
2. The defendant's land lines in this country and the cable lines between this country and Europe which the defendant leases and operates constitute a single system, and an allegation of unjust discrimination can not properly be predicated on the fact that the rates which defendant charges complainant for forwarding European messages from New York exceed the sums which the defendant, merely as a matter of bookkeeping, credits to itself when it performs the same service for its own cable lines.
3. Rates which defendant charges complainant for the transmission of deferred messages not shown to be unreasonable *per se*. Reparation denied.

William W. Cook for complainant.

Rush Taggart for defendant.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The defendant, the Western Union Telegraph Company, owns and operates telegraph lines which extend from New York, N. Y., to nearly all parts of the United States. At New York it receives from the complainant and from other cable companies messages from Europe and from South America for further transmission to interior points on its line. The gravamen of the complaint is that the defendant charges the complainant for transmitting "deferred" cable messages between New York and interior points on the defendant's line in the United States, its full local rates applicable to the transmission of "regular" cablegrams; whereas the defendant performs the same service for other cable companies, competitors of complainant, for one-half the local rates for regular cablegrams. It is alleged that the rates which the defendant charges and collects from the complainant are unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked.

There are 17 cable lines between the United States and Europe in the Atlantic Ocean. Eight of them are leased and operated by the defendant, five are owned and operated by the complainant, two by the German Cable Company, and two by the French Cable Company. These companies interchange messages with the telegraph lines operated by the European nations, and through rates are published from points in Europe and South America to points in the United States. The only rates involved in this proceeding are those on "inbound" messages, i. e., those transmitted to destinations in this country.

The complainant is associated with the Postal Telegraph-Cable Company, which also owns and operates telegraph lines extending from New York to various parts of the United States. The complainant owns no land lines in this country, and it usually turns over to the Postal Company at New York messages transmitted from Europe or South America via its cables; except, of course, messages destined to points in the United States served exclusively by the defendant, which are turned over to the defendant at New York.

Particular consideration has been given upon the present record to messages from points in South America to points in the United States. The complainant owns no cables extending between the United States and South America, but it participates in the South American business in connection with the Western Telegraph Company, which owns cables extending between Buenos Ayres, Argentina, and Lisbon, Portugal. Messages from South America may be transmitted by the Western Telegraph Company and its allied lines to London, England, thence via the complainant's cables to New York. The Central & South American Telegraph Company, which owns cables extending from Valparaiso, Chile, along the west coast of South America and through Panama to New York, competes with the complainant and its connections for South American business. For many years a contract existed between the defendant and the Central & South American Telegraph Company, referred to hereinafter as the South American Company, which provided, in effect, that the two companies would interchange messages with each other at New York to the exclusion of all other companies. The contract expired in 1903, but its provisions are still observed by the two companies. For the transmission of deferred messages from New York to interior points in this country the defendant charges the South American Company one-half its regular rates, whereas it charges the complainant its full rates for the same service.

The deferred cablegram service is said to have been inaugurated January 1, 1912, as the result of a conference of representatives of various cable companies held in London in 1910 at the instance of the postmaster general of Great Britain. The service is now accorded

in practically all of the more advanced nations, with the exception of Great Britain. Deferred messages must be in plain language of the country of origin or destination, or in French, the use of cipher or code words not being permitted. The usual charge for a deferred cablegram is one-half the charge for a regular cablegram, and in the case of through messages the various telegraph and cable companies participating in the transmission almost invariably receive as their divisions of the through rates one-half of their local rates on regular telegrams. A message originating at an interior point in France, for example, and destined to an interior point in the United States, might be transmitted via Havre, France, and New York. The French government would receive for its service in transmitting the message to Havre one-half its local rate; the cable company which accepts the message at Havre for transmission to New York would receive as its division one-half of its regular cable rate from Havre to New York; and the land line in the United States would receive as its share of the through toll one-half its full rate for regular cablegrams from New York to the point in question; except that if the message is transmitted by the cables of the complainant to New York, and there turned over to the defendant, the latter demands its full cablegram rate for its part of the service. The through charges almost invariably consist of the sums of the divisions received by the several companies.

The deferred cablegram service is recognized and provided for by the rules of the international telegraph convention, which consists of representatives of the national governments which operate their own telegraph systems. The rules adopted by that convention, although not binding upon the complainant or the defendant in this proceeding, are generally recognized by practically all of the telegraph companies of the world, including those in this country. One of the convention's rules provides that deferred telegrams shall be transmitted only after nonurgent private telegrams and press telegrams; except that deferred messages which have not reached their destination within 24 hours shall be transmitted in turn with non-deferred telegrams. That the defendant offers the deferred service to its patrons and recognizes that it is almost universally accorded is shown by the following advertisement, which appears on the back of defendant's cable message blanks:

DEFERRED HALF RATE.

Half-rate messages are subject to being deferred in favor of full-rate messages for not exceeding twenty-four hours. Must be in language of country of origin or of destination, or in French. This class of service is in effect with most European countries and with various other countries throughout the world. Full particulars supplied on application at any Western Union office.

The complainant maintains that the defendant agreed also, at the conference in London to which reference has already been made, to accept deferred messages from the cable companies for transmission over its land lines at half rates. The report of the postmaster general, introduced in evidence, shows that the defendant's representative at the conference made such an agreement, but the defendant insists that it was not intended to apply to all cable companies, and the report of the postmaster general is not entirely clear on that point. However that may be, the record shows that when the deferred service was inaugurated on January 1, 1912, the defendant accorded half rates to messages delivered to it by the complainant as well as to those which it received from other cable companies, and that this practice was continued until March 23, 1912, when the defendant notified the complainant that thereafter it would charge complainant the full local rates. The defendant states that the application of half rates to the messages received from complainant during that period was unintentional.

The complainant shows that the defendant transmits at half rates deferred messages from Australia delivered to it at Vancouver, British Columbia, by the British Pacific Cable-Board, which owns and operates a cable between Australia and Vancouver; and it is alleged, in the amended complaint, that the defendant thereby subjects the complainant to undue prejudice and disadvantage, and gives an undue preference and advantage to the British Pacific Cable Board. The latter was created by the British, Canadian, and Australian governments to lay a cable in the Pacific Ocean between Australia and Canada. The defendant concedes that it transmits messages at half rates for the British Pacific Cable Board, but the complainant delivers no messages to the defendant at Vancouver, and the record fails to show in what manner or to what extent, if any, the complainant competes with the British cable, or that the rates accorded by the defendant to the British Pacific Cable Board subject the complainant to undue prejudice.

The record contains comparatively little evidence addressed to the reasonableness *per se* of the rates in question, nor is the contention that they are unremunerative supported by the evidence. The fact that the deferred service is so generally accorded at half rates would seem to warrant the presumption, in the absence of evidence to the contrary, that those rates are not unremunerative, but in the absence of more complete evidence we are unable to find that they are inherently unreasonable. The defendant contends, without contradiction, that deferred messages are actually deferred only on the cable lines, and that on defendant's land lines they are handled as promptly as "regular" messages.

Certain comparisons are made between the rates on deferred messages and the rates on messages of other kinds. The defendant's regular rate for a telegram of 10 words from New York to San Francisco, Cal., is \$1, or 10 cents a word, not counting address or signature. The rate between the same points for day letters, for which a deferred service is provided, is \$1.50 for 50 words, or 3 cents a word, not counting address or signature. The rate for night letters, which are also deferred, is \$1 for 50 words, or 2 cents a word, not counting address or signature. For its transmission of deferred cable messages for the complainant from New York to San Francisco the defendant charges complainant 12 cents a word, the full cable rate, and this rate applies as well to the address and signature as to the message proper.

The defendant contends that deferred cablegrams differ in character from the other kinds of messages with which comparison is made, but the record fails to reveal any important difference between cablegrams on the one hand and day letters and night letters on the other hand, unless it be the length of the messages. Cablegrams usually contain much less than 50 words, one witness stating that the average is 16 words, and another giving it as 12 words. The cablegram rate from London to San Francisco is 15 cents per word. After paying 12 cents per word to the defendant for the land line transmission the complainant has left only 3 cents per word for its cable service, although the distance from London to New York is approximately the same as the distance from New York to San Francisco.

As previously stated, the defendant leases and operates a number of cables in the Atlantic Ocean between this country and Europe. Cable messages transmitted by the defendant over these cables and transferred at New York to the defendant's land lines for further transmission to an inland point in the United States may be regarded as continuous messages. The defendant in such cases performs a through service and collects a charge which covers the complete service. As a matter of bookkeeping it credits the cable lines, for their part in the transmission of through deferred messages, with one-half the regular cable rates; and similarly it assigns to itself, for its land line service, one-half of its regular rate from New York to the inland point in question. It is clearly the defendant's right, so far as the matters here in issue are concerned, to adopt such methods of bookkeeping as it deems advisable, and an allegation of unjust discrimination or undue prejudice can not properly be predicated upon the fact that the defendant charges a competing cable company for the service performed by it a rate or division which is greater in amount than the sum which the defendant arbitrarily credits to itself for performing the same service on messages which it receives from

its own cables. The difference in circumstances and conditions justifies a difference in practice.

With respect to messages from South America the situation is quite different. The two companies from which the defendant receives South American cable messages at New York, the complainant and the South American Company, are independent companies. Apparently the only difference between them, so far as the defendant is concerned, is that it has friendly relations with the South American Company, the result of years of close association and mutual assistance, while it has no such relations with complainant. It is hardly necessary to observe that the existence of friendly relations in the one instance and their apparent absence in the other can not be accepted by us as such a difference in conditions as to justify a difference in charges which otherwise would be condemned as unlawful.

The defendant contends that it is practically compelled to accord half rates on deferred messages to the South American Company because the Postal Company accords half rates to the complainant on such messages, and the defendant must meet this competition. It is doubtless true that the two competing routes must maintain the same through charges to competitive points, but it is obviously necessary to distinguish between the through charges on the one hand and the charges made by the defendant for its land line service on the other. Even if competitive influences require the equalization of the through charges, that fact can hardly be accepted as justifying the defendant in charging the complainant more for a given service than it charges complainant's competitor. It is important to observe, also, that the only rates involved in this proceeding are those to points in this country reached exclusively by the defendant—points which the complainant and the Postal Company are unable to reach.

The defendant contends that the rates on messages from points in foreign countries to points in the United States are through rates; that this Commission has no jurisdiction over such through rates; that the defendant has no "rates" on deferred messages from New York to points in the United States, the earnings received by the defendant on such messages being simply portions of the through charges accruing as divisions to the defendant for its part of the through service.

Apparently the rates on messages from points in foreign countries to points in the United States are not "joint through rates" such as those published by a railroad which holds the concurrences of its connections. The through rates, however, are made by adding together the rates or half rates of the several telegraph and cable companies which participate in the transmission, and thus the com-

plete charge for the through service can readily be ascertained and quoted to the sender at point of origin. As previously stated, the through charge on a deferred message from an interior point in France to an interior point in this country would consist of three component parts, the French government receiving one-half its local rate to Havre, the cable company receiving half its regular cable rate, and the land line in the United States receiving half its rate on regular cable messages. It is clear, therefore, that the through rate is a "combination" rate, one component part of which is the charge made by the land line for transmitting the message from New York to destination.

It may be observed that the transmission of a through message is not a continuous service. The message must be transferred from a land line to a cable line on the European shore, and again transferred from the cable line to a land line at New York; and the defendant concedes that "so far as defendant is concerned" the messages may be regarded as originating in New York. Looking at the matter from this point of view it is clear that we have authority under the act to require the defendant, in imposing charges for its service within this country, to avoid unjust discrimination, not only as between persons, but as between carriers. In *Mattingly v. Pennsylvania Co.*, 3 I. C. C., 592, at page 609, the Commission said:

It (a common carrier subject to the act) can not engage in the service and reject the obligations imposed for the regulation of the service. One of these obligations founded on the public interests is impartiality in receiving, shipping, forwarding, and delivering interstate traffic. There can be no preferential service in this respect as regards persons, carriers, or traffic, and no refusal to do for some what is done for others, nor any unjust discrimination in charges.

See also *Augusta S. R. Co. v. Wrightsville & T. R. Co.*, 74 Fed., 522.

Upon careful consideration of all the evidence of record we find and conclude that the charges imposed by the defendant upon the complainant for deferred cable messages originating in South America are and for the future will be unjustly discriminatory to the extent that they exceed the charges which the defendant contemporaneously imposes upon the South American Company for like service.

The evidence of record does not justify an award of reparation. It is shown that the complainant paid to the defendant greater sums than it would have paid if it had enjoyed the same rates as the South American Company, but the charges paid are not shown to be unreasonable *per se*, and the record affords no basis for determining the damage, if any, which the complainant sustained by reason of the more favorable rates accorded its competitor. Reparation is accordingly denied.

An appropriate order will be entered.

No. 8884.

BALTIMORE CHAMBER OF COMMERCE

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted January 13, 1917. Decided June 2, 1917.

For the past two years the carriers owning export elevators at Baltimore, Md., have declared embargoes from time to time on grain for export. Two of them have adopted the practice of accepting such grain for transportation only upon assurance that a vessel will be available to receive the grain at the port. The complainant alleges that this practice is unreasonable, unjustly discriminatory, and unduly preferential; that the defendants' practices with respect to embargoes on shipments of corn are likewise unlawful; that the defendants' practice of declaring, modifying, and suspending embargoes without sufficient notice to shippers has subjected certain persons to undue prejudice; and that undue prejudice also results from the defendants' practice of embargoing shipments of grain from certain territory while contemporaneously accepting grain from other territory;
Held:

1. Under the transportation conditions which have obtained for many months, and in view of those which the existing state of war necessarily creates, a practice of accepting shipments of grain in bulk for export only upon satisfactory evidence that arrangements for its immediate exportation have been made is not inherently unreasonable or otherwise unlawful. But the practice complained of, as applied to shipments of grain in bulk to Baltimore for export, does not accomplish the results desired and unduly prefers the persons to whom permits are issued, because the use made of the permits is not adequately policed and safeguarded. If the permit practice is maintained, the defendants should submit within 60 days for our approval rules which will eliminate the unlawful features of the present practice.
2. The evidence of record with respect to embargoes on corn is too meager to warrant a definite finding as to the lawfulness of the defendants' practices in that respect.
3. The allegations that undue prejudice results from the defendants' failure to give advance notice of their embargo bulletins, and also from their practice of embargoing grain shipped from certain specified territory, are not sustained by the evidence.

R. E. Lee Marshall for complainant.

Shirley Carter for Pennsylvania Railroad Company and Philadelphia, Baltimore & Washington Railroad Company.

Charles R. Webber and William Ainsworth Parker for Baltimore & Ohio Railroad Company.

Henry Granger Gaither and George R. Gaither for Western Maryland Railway Company.

REPORT OF THE COMMISSION.

HALL, *Chairman*:

The unusually heavy movement of grain for export through Baltimore, Md., during the past two years has led the rail carriers serving that port to declare embargoes from time to time for the purpose of relieving congestion in their elevators and on their tracks. These embargoes have been of various kinds and the practices of the several carriers have not been uniform. The complaint in the present proceeding is directed particularly against certain embargoes, generally called "modified embargoes," declared by the Pennsylvania Railroad Company and the Philadelphia, Baltimore & Washington Railroad Company, hereinafter collectively termed the Pennsylvania, and the Western Maryland Railway Company, which provide, in effect, that grain will be accepted by those carriers for delivery at their export elevators in Baltimore only when the shipper shows, to the satisfaction of the carrier or its agent, that a vessel will be waiting at the port to receive the grain upon its arrival. It is alleged that the practical effect of these embargoes is to give an undue preference to exporters of grain, to the undue prejudice of other grain dealers, and that they are unreasonable. Several other issues were raised by the complaint, but little evidence was presented respecting them and for convenience discussion of them will be reserved until later in this report.

MODIFIED EMBARGOES.

All kinds of grain are constantly being bought and sold on the grain exchange in Baltimore by jobbers, brokers, commission men, millers, and exporters. At least 90 per cent of the grain received in Baltimore is ultimately exported, but before it reaches the vessel it often passes through the hands of a number of intermediate parties, whose various transactions on the exchange account for the prominence of Baltimore as a grain market.

There are only four or five firms in Baltimore which export grain. The jobbers, brokers, commission men, and "receivers" are more numerous. The receivers differ from the commission men in that they buy grain and sell it on their own account, while the commission men sell as agents for the owners of the grain, usually western shippers. These dealers other than the exporters will be referred to collectively as intermediate dealers.

In normal times the exporters buy approximately 75 per cent of their supply of grain directly from western shippers and the balance of it from the intermediate dealers at Baltimore. The embargoes declared by the Pennsylvania and the Western Maryland, requiring satisfactory evidence that a vessel will be available to take the grain upon its arrival at the port, have made it practically impossible for the intermediate dealers to ship grain to Baltimore over the lines of those carriers without first selling the grain, or agreeing to sell it, to one of the exporters. The intermediate dealers are not usually engaged in exporting grain and therefore do not hire bottoms or reserve vessel space, and either because of their unwillingness or their inability to participate in the export business they are unable to designate a vessel to take the grain. The only grain dealers who are able to arrange for the vessels are the exporters, and they are therefore the only dealers who are able to comply with the condition which these two defendants have prescribed. The result is that the exporters had been able for several months prior to the hearing to ship to Baltimore much more grain than the vessels were able to carry away.

The practical operation of the present rule may be briefly described. If a Baltimore exporter desires to ship a quantity of grain in bulk from a western point to Baltimore, and is reasonably certain that he will have a ship ready when the grain arrives, he requests the designated agent of the carrier at Baltimore to permit him to make the shipment. If he is able to demonstrate to the agent's satisfaction that the ship will be in the harbor to receive the shipment, a numbered "permit" is issued which says, in effect, that the carrier will accept a specified number of cars to move to Baltimore from a designated point of origin.¹ The number of this permit is wired to the shipper, who thereupon tenders the shipment to the carrier's local

¹ The Pennsylvania's modified embargo bulletin of April 5, 1916, is as follows:

BALTIMORE, Md., April 5, 1916.

BULLETIN NO. 869.

To agents and yard masters:

Please cancel Bulletins Nos. 382, 399, 654, and 655, issued from this office February 17 and March 15, 1916, respectively, and be governed by the following:

Embargo on grain for export through the port of Baltimore is hereby revised as follows:

Embargo remains in effect on grain of all kinds in bags for export through the port of Baltimore, except that grain in bags specifically consigned for delivery at the terminals of the Canton Railroad of Baltimore may go forward when bills of lading, revenue and card waybills specifically show that delivery is to be made at the terminals of the Canton Railroad of Baltimore.

Embargo is continued in effect (as of close of business Thursday, February 3), and on corn in bulk for export through the port of Baltimore.

Embargo is restored in effect on oats and buckwheat for export through the port of Baltimore, and is continued in effect on all other kinds of grain for export through the port of Baltimore (except as noted in paragraph C), subject to the following conditions: Specific modifications of this embargo covering acceptances of all kinds of

45 I. C. C.

agent at point of origin, and it is thereupon forwarded, the number of the permit being inserted in the waybills and bill of lading.

As long as he continues to deal in grain only as a jobber or receiver, and does not engage in the export business himself, the intermediate dealer can ship grain over the lines of the Pennsylvania and the Western Maryland only by obtaining the consent of an exporter, as already explained. It is obvious that the intermediate dealer is thus placed to a certain extent at the mercy of the exporter. He can not sell grain to other buyers because they are unable to obtain the necessary permits. The consequent narrowing of the Baltimore market has prejudiced many firms and individuals in their operations, and dealers whose business has grown and prospered for many years suddenly found themselves facing almost certain failure.

The exporters do not seek or desire the monopoly of the export grain business which the practice in question tends to give them, and they join with the intermediate dealers in requesting that this permit system be discontinued. Their attitude is explained by the fact that it is to their advantage to have an extensive grain market at Baltimore. Such a market benefits the buyer as well as the seller. The exporters are chiefly interested in obtaining grain with which to fill their foreign contracts, and it is to their advantage to have as wide a choice as possible. The Baltimore market is more convenient than others. A particular kind of grain may be easily and quickly obtained on the Baltimore exchange, whereas it could be purchased only with considerable effort and inconvenience at the shipping points in the west. The transactions on the Baltimore exchange are governed by certain rules with which all of the buyers and sellers are familiar. Moreover, the exporters prefer the Baltimore market because the intermediate dealers on the local ex-

grain in bulk (except corn) for export through the port of Baltimore may be made under the following conditions:

1. Shipper or consignee must furnish satisfactory evidence of definite steamship engagement, which must be confirmed by Mr. W. S. Franklin, jr., division freight agent, Baltimore, Md.

2. The sailing dates of vessels must be known and also confirmed through Mr. Franklin.

3. Sufficient time must be allowed between shipping date and the known sailing date of vessel to allow for transportation to Baltimore.

4. Modifications must not be made, even under the above conditions, if the date of shipment is so far in advance of the date of sailing as to cause cars to be held an unreasonable length of time either on the road or at Baltimore.

5. The above conditions must not be construed as implying a guarantee of time or connection with a specific vessel.

6. Any modification made under the above conditions will be under serial numbers, which must be noted on the revenue and card waybills as follows:

"Modification of embargo, P. R. R., authority No. ----"

G. LATROBE,
General Agent and Superintendent.

(Genl. Supt's Embargo No. 255.)

change are men whom they know and in whom they have confidence, and with some of whom they have transacted business for many years.

All of the export elevators at Baltimore are owned by the carriers. Those of the Baltimore & Ohio at Locust Point have a capacity of something more than 2,000,000 bushels, the capacity of the Western Maryland's elevators at Port Covington. The export elevators at Canton of the Pennsylvania prior to June, 1916, when one of its elevators was partially destroyed by fire, had a capacity of approximately 2,500,000 bushels. The fire reduced the capacity substantially.

The Baltimore & Ohio has consistently followed the practice of declaring what are usually called "flat" or "absolute" embargoes. These embargoes, as the terms used to describe them indicate, operate within the limits prescribed as an absolute bar. At times they apply only on certain kinds of grain, or on grain from a specified territory, or on grain originating on the lines of certain designated carriers, but however greatly they may vary in these respects they are never modified so as to permit grain to move to a certain class of shippers, nor has the designation of a vessel been prescribed by that carrier as a condition precedent to its acceptance of a shipment for transportation to the port. When the embargo has been declared no shipments whatever are received from the territory designated. The embargo is continued in effect until, in the judgment of the carrier, the congestion is sufficiently relieved to warrant its withdrawal. When it is withdrawn, shipments are accepted from all shippers.

The witnesses for the complainant expressed a decided preference for the absolute embargo. Both the intermediate dealers and the exporters prefer this policy, because they regard it as more equitable in its operation. Such shipments as the intermediate dealers are making without the use of permits are made over the line of the Baltimore & Ohio, and it is only because of the policy adopted by that carrier that they have been able to transact any business independently of the exporters.

The Pennsylvania and the Western Maryland maintain that the modified embargo can not be regarded as unreasonable or unduly prejudicial, their contention being that the availability of the boats in one case and their nonavailability in the other creates a difference in transportation conditions which justifies a difference in policy. They contend that it is their duty as common carriers to transport commodities whenever and wherever their facilities permit them to do so, and that the only object of the modified embargo is to permit grain to move which could not move otherwise. Admitting

that the intermediate dealer may be prejudiced by this practice they maintain that his loss of business is attributable in the last analysis to his inability to furnish an outlet for the grain when it reaches the port; that the carriers should adapt their transportation rules to the transportation conditions which they find to exist, rather than to the convenience or the necessities of shippers or consignees whose interests may be directly or indirectly affected by the rules adopted; and that the practice in question permits the carriers to handle more grain than their facilities could accommodate under any other system.

The object of the modification, at least theoretically, is to permit export grain to move directly from point of origin to the waiting vessels even if the export elevators and the storage tracks at the port are congested with grain. The Pennsylvania and the Western Maryland insist that if permits are issued only on shipments of grain for which vessels are available, and which will not require storage or handling at the port, the movement of that grain will not increase the congestion, because it will move directly from cars to boats without being stored even temporarily in the elevators.

The evidence shows that the permit system has not effected the desired results. If the vessel on which space has been engaged does not arrive, or is delayed in arrival, or upon arrival takes another cargo under orders of the government whose flag it flies, or even if it is there ready for the grain but the grain on inspection at Baltimore is found not to be of the required grade, the purpose for which the permit was issued has been defeated, because the grain does not pass direct from car to hold of vessel, but must be stored either in the elevators or on the tracks. Even if the boat arrives as scheduled it may be delayed for many days because of its inability to obtain a berth at the elevator. The congestion is thereby continued. At the time of the hearing nearly all of the grain in the export elevators of the Pennsylvania and the Western Maryland, and most of the grain in cars on their storage tracks, was owned by exporters and had been shipped under permits. Many more cars, also shipped under permits, were moving toward the port to add to the congestion already existing, and witnesses testified that they failed to see how the congestion at the port could be relieved as long as the existing permit system was retained. There is no evidence of record to indicate that the defendants make any effort to police shipments of grain to insure their delivery to the vessel named by the person to whom the permit was issued, nor does it appear that additional permits will be denied because the applicant has failed to load into boats the grain he has already received at the port

under permits previously issued to him. On the contrary the record shows clearly that up to the time of the hearing the elevators and tracks of the Pennsylvania and the Western Maryland had been almost continually congested with grain shipped under permits, and which for some reason had not been exported.

The defendants' contention that a larger quantity of grain can be exported under the permit system than under the absolute embargo plan is not established by the evidence. Prior to June, 1916, when one of the Pennsylvania elevators was destroyed by fire, the capacity of the Baltimore & Ohio export elevators was somewhat less than the capacity of the export elevators of the Pennsylvania. Because of the different embargo policies pursued by the Baltimore & Ohio on the one hand and by the Pennsylvania on the other it will be profitable to compare their total grain exports during a representative period. The following table shows the number of bushels exported from the Baltimore & Ohio, Pennsylvania, and Western Maryland elevators during the first nine months of the past year:

Number of bushels of grain, all kinds, exported from elevators at Baltimore, Md., during the first nine months of the year 1916.

	Baltimore & Ohio R. R.	Pennsyl- vania R. R.	Western Maryland Ry.
January.....	4,789,524	4,074,647	1,402,285
February.....	3,057,151	2,779,113	1,698,662
March.....	4,631,123	5,069,200	2,553,356
April.....	4,085,139	4,362,492	1,930,978
May.....	4,798,374	5,709,113	4,213,706
June.....	4,584,940	3,576,200	2,344,839
July.....	5,630,134	2,399,436	2,844,105
August.....	5,878,748	1,400,181	2,869,554
September.....	4,079,874	1,381,125	3,299,365
Total.....	41,535,007	30,750,507	23,156,850

During the early part of January, 1916, the first month shown in the table, there were general embargoes on the lines of all these carriers. On January 17, 1916, the Baltimore & Ohio raised its embargo on all export grain except corn and the Pennsylvania took practically the same action on January 18, 1916. On February 3, 1916, the Pennsylvania declared a general embargo, which continued until February 17. An absolute embargo also prevailed on the Baltimore & Ohio from February 16 to March 14 of that year. On April 5, 1916, the Pennsylvania issued its embargo bulletin No. 869.

Prior to April 5, 1916, therefore, the Pennsylvania regulated the movement of grain by means of absolute embargoes. It will be observed that during the first four months of 1916 the exports of grain through the Pennsylvania elevators were substantially the same in amount as those through the elevators of the Baltimore & Ohio,

which pursued the same policy. Counsel for the Pennsylvania calls attention to the fact that in May, 1916, the month following the inauguration of the permit system, there was a marked increase in the exports through the Pennsylvania elevators. The evidence does not warrant the assumption that the increase in that month was attributable to the form of the embargo. The Baltimore & Ohio, which adhered to the policy of declaring flat embargoes, also increased its exports substantially during the month of May, with still greater increases in June, July, and August. The decided decrease in the exports through the Pennsylvania elevators beginning in June is attributable to the fire previously mentioned. No definite conclusion as to the effect of the permit system upon the volume of grain exported can be drawn from the above figures.

The figures showing the number of bushels of grain exported through the elevators of the Western Maryland are not very enlightening. That company did not engage in the export wheat traffic prior to December, 1915, when its first elevator was constructed. Effective January 4, 1916, an absolute embargo was declared. On February 26, 1916, its general embargo was modified so as to provide for the acceptance of export grain "when vessel charter * * * is furnished to the railway company, and when such vessel has passed in through Hampton Roads capes;" with provision that the acceptance must be authorized by the carrier's general freight agent. During a large part of the year 1916 embargoes similarly modified were in effect on the line of this carrier. The Western Maryland has operated export elevators for such a short time that it is admittedly difficult to ascertain the exact effect of the permit system on the volume of exports. The Western Maryland's elevator capacity, as previously stated, is 2,000,000 bushels. In December, 1915, when it first engaged in the export grain traffic, it had only one elevator, the capacity of which was 900,000 bushels.

The general superintendent of transportation for the Baltimore & Ohio explained in some detail that carrier's method of controlling the movement of grain by means of absolute embargoes. In addition to its export elevators the Baltimore & Ohio has at Locust Point a storage yard with a capacity of 3,000 cars, which is used exclusively for storing export grain. Almost continuously during the last two years the elevators and storage tracks have been filled with grain, and at certain periods the congestion at the port has made it necessary for this carrier to hold grain on its tracks as far west as its Chicago division. On January 5, 1915, the company had 1,983,332 bushels of grain in its Locust Point elevators and 3,084 carloads of grain on its line. On January 9, 1915, an absolute embargo was declared, with the result that on February 1 there was 1,889,899

bushels in the elevators and only 1,255 carloads on the tracks. Effective February 1, the embargo was removed except with respect to shipments consigned via two steamship lines which had discontinued their sailings. On December 15, 1915, there were 1,990,725 bushels of grain in the elevators and 3,847 carloads on the tracks. An absolute embargo was then declared, effective December 16, 1915. During the month of January, 1916, the number of cars of grain on the line was steadily reduced. Effective January 18, when there were approximately 2,000 carloads of grain on the line, the embargo was raised so as to permit the acceptance of all kinds of export grain, except corn, from points on the Baltimore & Ohio system. Beginning January 28, 1916, corn was accepted from stations on the Baltimore & Ohio system, and three days later it was accepted from the Baltimore & Ohio's western connections. On February 16 it was found necessary to declare another absolute embargo against export grain. Amendments were subsequently made as the circumstances required.

The preceding table shows that in spite of the frequent declaration, suspension, and modification of embargoes by that company the amount of grain exported from the Baltimore & Ohio elevators varied comparatively little from month to month. The principal witness for the Baltimore & Ohio testified that the embargoes are necessitated by shortage of vessels; that much more grain could be handled if the vessels were available; that it is the custom of the Baltimore & Ohio, in determining its embargo policies, to confer with representatives of the Baltimore Chamber of Commerce to ascertain the number of vessels which may be expected; and that the Baltimore & Ohio has not given much consideration to the advisability of adopting the permit system.

Grain can be handled so rapidly from the elevators to the vessels that even if there is an undue accumulation of grain at the port it can be relieved in a comparatively short time by means of absolute embargoes. On the day of the hearing the Western Maryland had 1,642 carloads of grain on its line. At that time an average of 90 cars daily, or 2,700 cars per month, were being unloaded into vessels through the Western Maryland elevators. The total number of cars on the line, therefore, would have been unloaded in less than three weeks. On January 9, 1915, the Pennsylvania had in its export elevators 2,118,193 bushels of grain, 1,254 carloads of grain in its Baltimore terminals, and 3,114 carloads billed to arrive. At the average daily rate of handling at that time it is estimated that all of the grain, both in the elevators and on the tracks, could have been unloaded into vessels in 33 days.

Grain shipped to a Baltimore exporter from a given point of origin by virtue of a permit issued by one of the defendants moves under the same circumstances and conditions as grain consigned to an intermediate dealer at the same port would move from the same point of origin if the permit system did not exist. It moves over the same tracks, passes through the same export elevator, and may be spouted into the same ship. If A and B are both shippers of grain located at a given point in the west, and A has trade relations with a Baltimore exporter, to whom he usually ships his grain, while B has similar relations with an intermediate dealer at Baltimore, to whom he usually ships his grain, the permit system operates to the advantage of A and to the disadvantage of B. One of the witnesses for complainant, an agent of one of the exporters who buys grain on commission in the west, testified that by reason of his ability to secure permits he could practically compel his competitors to sell their grain to him. Western dealers and shippers joined with the Baltimore exporters and intermediate dealers in condemning the permit system and in expressing a decided preference for the absolute embargo.

To explain the purpose of the carriers in adopting the practice in question counsel for the Pennsylvania asks us to look at the port of Baltimore as a large receptacle for grain, with inlets and outlets. Under the former policy of declaring flat embargoes the receptacle was completely filled with grain, belonging in large part to intermediate dealers. It then occurred to these carriers to open a "channel" in the receptacle through which grain consigned to certain vessels could be moved to the vessels in spite of the congestion in the receptacle. The plan of modifying the embargoes was hit upon as the most practicable means of making such a channel. Even though the receptacle is filled with grain belonging to intermediate dealers, said the carriers, we shall permit other grain to move in this channel when the shipper can show to our satisfaction that it will not add to the congestion, but will pass directly through the channel to the waiting vessel.

If this commendable object were attained in actual practice there would seem to be no objection to the permit system, but the record clearly shows that it has not been attained. There was no grain in the receptacle belonging to intermediate dealers through which to keep open a channel. The receptacle was filled with grain belonging to exporters, grain which had moved under permits; and the only difference between conditions at that time and those prevailing before the adoption of the permit system was that since its adoption the in-

intermediate dealers were unable to share in the business. Grain was moving through the receptacle in much the same way as it moved before the embargoes were modified, because the carriers, after opening the channel, allowed so much grain to move under permits for which no outlet proved to be available that the incoming grain filled the receptacle and the channel disappeared. The result, undoubtedly not intended by the carriers, was to give four or five exporters a virtual monopoly of the grain business at the port, to the injury of many other dealers there who had for years shared in the facilities provided by the carriers, and the whole difficulty seems to be due to the fact that adequate provision is not made for policing shipments moving under permits. There is apparently no limit to the number of permits an exporter may obtain, provided only that he will "name the boats." This explains why the carriers' tracks at the time of the hearing were blocked with grain moving under permits. The following excerpt from the record shows that the carriers' failure to limit properly the number of permits issued and to police the shipments resulted in congesting the port with grain belonging to exporters:

Mr. CARTER (counsel for defendants). There are 1,500,000 bushels of grain. How many ships would it take to load that much? How many bushels do you load into a ship ordinarily?

Mr. JACKSON (an exporter). Two hundred thousand bushels is a fair quantity.

Mr. CARTER. You have got work then for about seven ships, haven't you?

Mr. JACKSON. Yes.

Mr. CARTER. How long would it take to load those?

Mr. JACKSON. It takes an average of about five days to load a ship.

Mr. CARTER. Then why bring any more grain until you have gotten rid of those seven or eight ships, which it would take five or six days to do?

Mr. JACKSON. Mr. Carter, I have got five million or six million bushels of grain sold. I have got to have it coming here. I have got more than three or four times what will fill up those elevators. * * *

Mr. CARTER. But are not the tracks jammed all the way from here north to Buffalo?

Mr. JACKSON. While they may be jammed, yet the railroad will give me authority to bring some more if I give them the name of a boat, but they will not give authority to the man who is in the receiving business because he can not give the name of a boat. * * *

Mr. CARTER. Therefore you keep it backed up on the railroad and still bring others here?

Mr. JACKSON. I give orders to the railroad to bring every car into Baltimore as quickly as they can. I do not back it up.

Mr. CARTER. To whom does all the grain belong that is here?

Mr. JACKSON. I should say the most of it belongs to Gill & Fisher and John T. Fahey [exporters].

Mr. CARTER. Then you, that is, the exporters, own all the grain from here to Harrisburg, and all the grain that is in the elevator? Then how was it that the commission men did any business before the embargo went on?

Mr. JACKSON. Because they owned part of it then, but they can not get it shipped to them now.

We can not close our eyes, particularly in the present international situation, to the necessity of making every possible effort to move certain products, including food products, as the immediate needs, foreign and domestic, may demand. To produce food and insure its expeditious movement to the place where it is to be used may properly be regarded as a measure of national defense. We can not look with disfavor upon any suitable plans adopted by the carriers with that commendable object in view.

Upon the record before us we find and conclude that under the transportation conditions which have obtained for many months, and in view of those which the existing state of war necessarily creates, a practice of accepting shipments of grain in bulk for export only upon satisfactory evidence that arrangements for its immediate exportation have been made, and that it will not be left indefinitely on the carrier's hands at the port, is not inherently unreasonable or otherwise unlawful, but that the practice complained of as applied to shipments of grain in bulk to Baltimore for export does not accomplish the results desired, and unduly prefers the persons to whom permits are issued, because the use made of the permits is not adequately policed and safeguarded. If the permit system or practice is maintained, the carriers should promptly adopt rules which will eliminate the unsatisfactory and unlawful features to which reference has been made. These rules, which should be submitted to us for approval within 60 days from the service of this report, should make adequate provision for the policing of shipments and for the proper limitation of the number of permits issued, or such other provisions as will effect the results desired. No order will be entered at the present time.

EMBARGOES ON CORN.

The complainant alleges that—

during long periods, and at times when the season for traffic in corn was at hand, the defendants have either absolutely and completely embargoed the shipment and transportation of the same over their lines to Baltimore, while at the same time suspending said embargoes with respect to other kinds of grain, * * * or they have, through said embargo regulations, imposed such limitations and restrictions upon the shipment and transportation of corn as to practically prevent and prohibit the corn traffic at the port of Baltimore, while permitting other kinds of grain to be freely transported over their lines to Baltimore.

Corn contains more moisture than any other grain. The less moisture it contains the better its quality. It is sometimes necessary to put the corn through "driers" at the port for the purpose of reducing the moisture, and if it is stored in the elevators for a long period it must be moved from one bin to another approximately every month to permit the air to circulate through it. During the germination season—April to June—corn is apt to "heat" or "cook," even when in transit, thereby impairing its value. An added difficulty has arisen in the form of a rule promulgated by the British Admiralty limiting the amount of corn which certain vessels may carry.

During the past year corn has been the subject of absolute embargoes almost continuously. It is said that this was due in the first instance to reports that the crop contained an unusually large percentage of moisture. Several witnesses for the complainant testified, on the other hand, that the crop shipped during the past year was of unusually good quality. Only 2 per cent of the corn received at the Western Maryland elevator had to be dried, but this was due to the fact that there was an embargo against corn during the germinating season. At the Baltimore & Ohio elevators 2,139,394 bushels of corn were dried during the fiscal year ended June 30, 1916, as against 544,000 bushels in the fiscal year ended June 30, 1915, although the amount of corn passing through the elevators was much greater in 1915 than in 1916. It is the right of the carriers to apply different rules to different kinds of grain only when the transportation conditions are so unmistakably different as to warrant the distinction. The evidence of record with respect to the embargoes on corn is meager, and would not warrant a definite finding as to the lawfulness of the defendants' practices in this respect. The complainant has failed to sustain its contention.

ADVANCE NOTICE OF EMBARGOES.

It is alleged that the defendants' practice of declaring, modifying, and suspending embargoes without sufficient notice to shippers subjects certain interests at Baltimore and elsewhere to undue prejudice, and that they are thereby denied "reasonable, proper, and equal facilities for the receiving, forwarding, and delivery of grain." There is practically no evidence of record to support this allegation. It appears that as a rule the Baltimore & Ohio gives 48 hours' notice of an embargo. The defendants contend, without contradiction, that if shippers are notified in advance of the carrier's intention to declare an embargo shipments are immediately offered in such quantities as to cause unusual congestion, and that the very purpose of the embargo is thereby defeated.

In *Eastern Railway v. Littlefield*, 237 U. S., 140, 145, the Supreme Court said:

But, where, without fault on its part, a carrier is unable to perform the service due and demanded, it must promptly notify the shipper of its inability. Otherwise the reception of goods without such notice will estop the carrier from setting up what would otherwise have been a sufficient excuse for refusing to accept the goods or for delay in shipment after they had been received.

DISCRIMINATION AS BETWEEN DIFFERENT TERRITORIES OF ORIGIN.

The complainant also alleges that the defendants have at times suspended the operation of the embargoes with respect to shipments of grain originating in certain specified territories and localities, especially those where competition between carriers exists, while continuing them with respect to grain originating in all other territories and localities, which practice the complainant regards as unreasonable, unjustly discriminatory, and unduly preferential. Little evidence was addressed to this issue, and we must find that the practice is not shown to be unreasonable or otherwise unlawful.

SUPERVISION OF EMBARGOES BY THE COMMISSION.

The complainant requests the Commission to "assume and exercise jurisdiction, supervision, and control over the defendants in the matter of said embargoes and all other embargoes." Our jurisdiction to determine the lawfulness of the defendants' practices, including the declaration of embargoes, is not questioned. The act to regulate commerce does not inhibit the declaration of an embargo by a carrier, and the advisability or the necessity of declaring embargoes is a matter of policy to be determined in the first instance by the carrier. *Penna. R. R. v. Puritan Coal Co.*, 237 U. S., 121, 133. Our jurisdiction is limited to determining the lawfulness of the practices in this respect and to requiring, after full hearing, the establishment and maintenance of such regulations or practices as we may find to be just, fair, and reasonable, except as that jurisdiction has been enlarged by the amendment to section 1 of the act, approved May 29, 1917, after the submission of this case, and therefore not here considered.

DANIELS, *Commissioner*, dissenting:

The report in this case finds that the practice of two of the carriers in excepting from an embargo upon grain for export those shippers who can show that vessel engagements have been concluded for the exportation of the grain at the port is not inherently unreasonable or otherwise unlawful. The report also makes clear that this so-called modified embargo as administered has not attained the end sought but has augmented the congestion of export grain

at Baltimore. The record in the case also shows that the permits issued have not been limited to the capacity of vessels engaged for export, and that while the tracks are congested with cars loaded with export grain, the carriers will give authority to bring additional export grain if they are given the name of a vessel which the exporter says has been engaged for the exportation of the grain. The report also finds that this system of permits unduly prefers the persons to whom the permits are issued and essentially confines the shipment of export grain to Baltimore to the five or six exporters at that point.

The record also indicates that the system of the absolute embargo consistently followed by the Baltimore & Ohio is fully as effective in preventing congestion at the port as the modified embargo or permit system practiced by the Western Maryland and the Pennsylvania Railroad. The absolute embargo moreover does not result in the undue preference to some shippers and to the undue prejudice to other shippers. Despite the fact that the modified embargo as administered is explicitly found to result in unlawful discrimination, the report does not propose to require the discontinuance of this practice. It proposes on the other hand to accord the carriers 60 days within which to submit for our approval rules for the proper policing of the permit system. The majority report says:

We can not close our eyes, particularly in the present international situation, to the necessity of making every possible effort to move certain products, including food products, as the immediate needs, foreign and domestic, may demand. To produce food and insure its expeditious movement to the place where it is to be used may properly be regarded as a measure of national defense. We can not look with disfavor upon any suitable plans adopted by the carriers with that commendable object in view.

As shown by the report, the permit system has not insured the avoidance of congestion at the port and has issued in unlawful preference and prejudice. There is no evidence of record so far as I can learn that would indicate that a system of absolute embargoes is not fully as effective in promoting the expeditious movement of grain to the port for export as the permit system. It therefore appears to me that neither upon grounds of policy nor upon grounds of lawfulness is this permit system of modified embargoes permissible. The equality of treatment which the law enjoins upon carriers in their treatment of different shippers can readily be, and has persistently been, violated through this policy of modified embargoes. Essentially it results in the fact that the purchaser of grain at the point of origin who can show no permit can not compete with the purchaser who can name a vessel engaged for exportation. I am not satisfied that a practice such as the modified embargo under the permit system is consistent with sec-

tion 3 of the act to regulate commerce. In case a carrier should embargo passenger traffic to a certain point upon its line unless the passenger could produce in advance evidence that he had available private means of transportation at the terminus of a railroad line, such a practice would, in my judgment, be clearly unlawful. If in the movement of dairy products from western territory, for instance, to the eastern seaboard via the twin cities, an embargo should be laid upon the movement eastward from the twin cities unless the western shipper could certify that he would provide or had provided a private refrigerator car for the eastward movement from the twin cities, I should consider such a modified embargo to be inherently unlawful as against shippers in the same territory of origin who do not own private refrigerator cars. If similarly an embargo upon petroleum and its products from the Kansas oil fields to the eastern seaboard were declared via the St. Louis gateway unless the shipper could in advance give assurance that he had provided or would provide private tank cars for the eastbound movement from St. Louis, such a modified embargo would, in my judgment, unlawfully prejudice shippers from the territory of origin who could not give similar assurance. Therefore both on grounds of dubious legality as well as on grounds of doubtful efficiency, I am obliged to dissent from the conclusions contained in the majority report.

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No. 7547.

THEODOR KUNTZ COMPANY, SUCCESSOR TO
THEODOR KUNTZ,

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted November 4, 1915. Decided March 13, 1917.

Rates on logs in carloads from Chaffee, Mo., to Cleveland, Ohio, found to have been and to be unreasonable. Reparation awarded and reasonable maximum rate prescribed for the future.

O. M. Rogers for complainant.

Thomas Bond for St. Louis & San Francisco Railroad Company and its receivers.

C. B. Cardy for Chicago & Eastern Illinois Railroad Company.

W. C. McLoughlin for Baltimore & Ohio Southwestern Railroad Company.

H. D. Palmer for New York, Chicago & St. Louis Railroad Company.

Howard T. Ballard for New York, Chicago & St. Louis Railroad Company and New York Central lines.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This complaint was filed December 9, 1914, by Theodor Kundtz, an individual, formerly engaged in the manufacture of sewing machine cabinets, furniture, and automobile bodies, at Cleveland, Ohio. The allegations of the complaint, as amended July 14, 1915, are that rates of 20 cents and 21.5 cents per 100 pounds charged by defendants for the transportation of 263 carloads of logs shipped from Chaffee, Mo., to Cleveland, during the period June 23, 1913, to March 13, 1915, inclusive, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded and exceed 16 cents per 100 pounds. Reparation is asked. Two shipments from Commerce, Ill., to Cleveland were included in the complaint, but the claim as to these shipments was abandoned at the hearing. At the hearing the complaint was amended to include the Theodor Kundtz Company, a corporation, successor in interest to Theodor Kundtz, as a party complainant. Rates are stated herein in cents per 100 pounds.

The St. Louis & San Francisco Railroad, hereinafter called the Frisco, owns yards at Chaffee where it delivers traffic destined to eastern points to the Chicago & Eastern Illinois Railroad, hereinafter called the Eastern Illinois. It also owns tracks to Rockview, Mo. The Eastern Illinois uses the Chaffee yards and the track to Rockview under an operating contract. From Rockview the Eastern Illinois also has trackage rights over the St. Louis Southwestern Railway to the bridge across the Mississippi River at Thebes, Ill., which bridge it owns in part and over which it operates.

The shipments were billed from Chaffee by the joint agent of the Frisco and the Eastern Illinois. They moved by way of the Frisco $1\frac{1}{2}$ miles to Chaffee yard, thence by the Eastern Illinois through Rockview 2 miles to the Thebes bridge, thence over the bridge to Thebes, a total distance of 15.6 miles. From Thebes they moved over various routes to Cleveland.

Prior to August 25, 1913, no joint rates applied on logs from Chaffee to Cleveland, the normal basis being the combination on the river crossings, either Thebes or St. Louis. On this basis the rate from Chaffee to Cleveland was 21.5 cents; 6.5 cents to Thebes, and 15 cents beyond. Effective August 25, 1913, defendants published a joint rate of 20 cents, minimum 30,000 pounds, on rough mill logs from Chaffee to Cleveland, applicable by way of Thebes. On October 15, 1913, this rate was also made applicable through East St. Louis, Ill., and on December 4, 1913, by all gateways. Charges on some of the shipments in controversy were collected on the basis of the 21.5-cent rate, and on others at the 20-cent rate. It appears from the record that two of the shipments were undercharged.

On October 26, 1914, following *The Five Per Cent Case*, 31 I. C. C., 351, the rate on logs from Thebes to Cleveland was increased to 15.8 cents. On March 1, 1915, the Chaffee-Cleveland rate was increased to 20.7 cents, and on May 1, 1916, the Chaffee-Thebes rate on logs and lumber was reduced to 6 cents. The present rates to and from Thebes aggregate 21.8 cents. The Chaffee-Cleveland joint rate of 20.7 cents divides 4.9 cents to the Frisco and the Eastern Illinois, and 15.8 cents to the lines east of the Mississippi River. The Theodor Kundtz Company, hereinafter called the complainant, cites this rate and compares the division of the Frisco and the Eastern Illinois with a proportional rate on logs in carloads of 2.5 cents from Cape Girardeau, Mo., to Thebes, 28 miles. It urges that the use of this proportional rate by competitors located at Cape Girardeau subjects it to disadvantage; that it unduly prefers Cape Girardeau; and that unjust discrimination results. Complainant contends that the rates assailed should not have exceeded and should not now exceed 16 cents. Defendants reply that the 2.5-cent proportional rate from
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Cape Girardeau was established under a form of duress in that the Frisco was required to maintain it for a period of 30 years in return for necessary franchise privileges within Cape Girardeau; that it was made without regard to cost of service and under circumstances and conditions substantially dissimilar to those governing the establishment of a normal rate; that it was water compelled; and that it is not a fair measure of the reasonableness of the rate assailed. It is also shown that no logs originate at Cape Girardeau; that they must first be shipped into that point from tracts at least 10 miles beyond; that the Missouri distance scale on logs for 10 miles or less is 3.8 cents; and that the aggregate of the intermediate rates from the nearest producing point, to Cleveland, based on Cape Girardeau and Thebes, is in excess of the rates assailed.

Complainant ships most of its logs from Pennsylvania, Ohio, and West Virginia; occasionally it receives shipments from Missouri. The Cape Girardeau and Chaffee markets are alike available to complainant and its competitors, and there is no proof that the proportional rate cited has resulted in undue prejudice or unjust discrimination. No movement of logs from Cape Girardeau is shown.

Complainant cites lower intrastate and interstate rates on logs for various distances from points on the Frisco in Missouri, Arkansas, Oklahoma, and Texas. Defendants insist that the Chaffee-Thebes rate compares favorably with the rates of the Frisco, the Iron Mountain, and the St. Louis Southwestern Railway on like traffic for similar distances in the same general territory.

In *Von Behren Mfg. Co. v. St. L. & S. F. R. R. Co.*, Docket 4976, unreported, we prescribed a proportional rate of 5.5 cents from Morehouse, Mo., to Thebes, 41 miles, on lumber destined to Evansville, Ind. In *Disher Hoop & Lumber Co. v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 488, decided March 5, 1913, and cited by complainant, we found that the local rate of 6.5 cents on coiled elm hoops, taking the lumber rate, from Chaffee to Thebes, was unreasonable to the extent that it exceeded 4 cents. In *Hoops from Chaffee, Mo.*, 38 I. C. C., 482, we considered the reasonableness of a proposed increase from 4 cents to 6 cents in the local rate on coiled elm hoops from Chaffee to Thebes, filed to become effective after the expiration of our order in the *Disher Case*, *supra*, but found no changes in conditions that would warrant a departure from our previous finding.

Comparisons are submitted by complainant showing rates on logs between points in Ohio, Indiana, Illinois, and Pennsylvania based on the so-called central freight association log scale, lower than the rate assailed, and complainant urges the use of this basis in constructing joint rates on logs from Chaffee to Cleveland. This scale, however, was originally established to apply solely to movements of

300 miles or less, and with few exceptions its use has been restricted to one-line or system line hauls. The customary basis for logs in official classification territory is sixth class, minimum 34,000 pounds, and the present sixth-class rate from Thebes to Cleveland is 17.9 cents.

Complainant cites rates and values of wood-pulp board in central freight association territory, based on 83.33 per cent of sixth class. Wood-pulp board is rated fifth class in the official classification, and there is no showing that it competes with logs. Aside from the recital of rates no evidence was furnished to make the comparisons helpful.

Defendants observe that log traffic to Cleveland must bear the return of empty equipment to coal-producing points in southern Illinois.

As stated, we have twice found that 4 cents is a reasonable maximum rate on coiled elm hoops in carloads from Chaffee to Thebes. Manifestly the rate on logs should not be higher than on hoops. The rate maintained from Thebes to Cleveland was 15 cents prior to October 26, 1914, and 15.8 cents subsequent to that date.

We find that the charges collected on the shipments in question were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 19 cents per 100 pounds on the shipments that moved prior to October 26, 1914, and 19.8 cents per 100 pounds on the shipments that moved on and after October 26, 1914. We also find that 19.8 cents per 100 pounds will be a reasonable maximum rate for the future. We further find that complainant, Theodor Kundtz, made the shipments as described and paid and bore charges thereon herein found to have been unreasonable; that he was damaged to the extent that the charges collected exceeded the charges that would have accrued at the rate of 19 cents per 100 pounds on shipments moving prior to October 26, 1914, and 19.8 cents per 100 pounds on shipments moving on and after that date; and that complainant Theodor Kundtz Company, successor to Theodor Kundtz, is entitled to reparation with interest. The exact amount of reparation due can not be determined upon the present record. Complainant Theodor Kundtz Company should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 8850.

GUGGENHIME & COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted December 26, 1916. Decided June 2, 1917.

Claim for reparation on a carload of fig pulp from Fresno, Cal., to New York, N. Y., held to have been abandoned, and complaint dismissed.

J. W. Chapman for complainants.

G. H. Baker for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in packing dried fruits, with its principal office at San Francisco, Cal. By complaint, filed May 1, 1916, it alleges that the charges collected by defendants for the transportation, in February, 1914, of a carload of fig pulp from Fresno, Cal., to New York, N. Y., were unreasonable and unjustly discriminatory. Reparation is asked.

On March 9, 1915, the defendants filed an application on our special docket for authority to make refund on this shipment. We found that the claim could not be disposed of informally, and so notified complainant August 5, 1915, calling its attention to its right to file a formal complaint. Complainant failed to file a formal complaint thereafter until May 1, 1916.

The formal complaint was not filed within two years after the cause of action accrued, nor within a reasonable time after notice that the claim could not be adjusted informally. The claim therefore must be held to have been abandoned, and the complaint will be dismissed. *Rule III of Rules of Practice; Kenefick-Quigley-Russell Construction Co. v. So. Ry. Co.*, 36 I. C. C., 324, and cases there cited.

An order dismissing the complaint will be entered.

No. 8915.

CHICAGO RETORT & FIRE BRICK COMPANY

v.

WABASH RAILWAY COMPANY ET AL.

Submitted January 9, 1917. Decided June 2, 1917.

Rate on fire clay in carloads from High Hill, Mo., to Ottawa, Ill., not shown to be unreasonable. Complaint dismissed.

I. W. Preetorius and Charles S. Reed for complainant.

H. E. Watts and H. R. Brashear for Wabash Railway Company.

M. A. Patterson for Chicago, Rock Island & Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the manufacture of fire brick at Ottawa, Ill. By complaint, filed May 18, 1916, it alleges that defendants' rate of \$1.50 per net ton for the transportation of fire clay in carloads from High Hill, Mo., to Ottawa, is unreasonable to the extent that it exceeds \$1.36 per net ton. The establishment of a reasonable rate for the future is asked. Rates are stated in amounts per net ton, unless otherwise specified.

High Hill is a local station on the Wabash Railway, between St. Louis, Mo., and Moberly, Mo. Ottawa is located between Streator, Ill., and Chicago, Ill., and is served by the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, and the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island. Shipments of fire clay from High Hill to complainant's plant at Ottawa, which plant is situated on the Rock Island, usually move by way of the Wabash, through St. Louis to Streator, and the Burlington thence to Ottawa, 321 miles, where they are switched by the Rock Island to complainant's plant. They may, however, move by way of the Wabash through Moberly and Hannibal, Mo., to Streator and the Burlington beyond, 416 miles. The ton-mile earnings at the \$1.50 rate for the shorter distance are 4.7 mills, and for the longer 3.6 mills; at the \$1.36 rate sought the ton-mile earnings would be 4.2 mills and 3.3 mills, respectively. The Wabash absorbs a bridge toll of 20 cents per ton on shipments moving through St. Louis and 25 cents per ton on shipments moving through

Hannibal. The Burlington absorbs the Rock Island's switching charge of \$3 per car at Ottawa. Deducting the charges absorbed, the ton-mile revenues are materially less than those shown.

Complainant cited a rate of \$1.40 formerly maintained by the Wabash on fire clay from High Hill to Chicago, 361 miles. Effective December 1, 1916, this rate was increased to \$1.53, and is still in effect.

The Chicago & Alton Railroad publishes a rate of \$1.36 on fire clay and fire brick from Mexico, Vandalia, and Fulton, Mo., to Ottawa. Vandalia and Fulton are contiguous to High Hill but are local stations on the Chicago & Alton. Mexico is about 36 miles northwest of High Hill and is served by the Wabash, the Burlington, and the Chicago & Alton. The rate on fire brick and fire clay, by way of the Wabash, from Mexico to Chicago is \$1.53; by way of the Chicago & Alton, \$1.48, which is the same as the rate from St. Louis. The short-line distance between these points is by way of the Chicago & Alton. A representative of the Wabash testified that his company does not care to meet the competition of the Chicago & Alton for this traffic from Mexico, and that it does not consider it proper to carry the St. Louis rates as far west as Mexico. Both routes of the Wabash from this clay-producing territory to Chicago territory, in which Ottawa is generally placed for rate-making purposes with respect to traffic from west of the Mississippi River, are circuitous, while the route of the Chicago & Alton is direct, and it was contended on behalf of the Wabash that higher rates over its line are therefore justified.

Complainant submitted exhibits comparing the rate assessed with rates applying in the same and in other territories. Most of the comparative rates cited apply on fire brick and fire clay, although some apply on the latter only. They yield from 2.89 mills to 5.1 mills per ton-mile for distances ranging from 47 miles to 740 miles.

We find that the rate assailed is not shown to be unreasonable, and an order dismissing the complaint will be entered.

No. 8864.

BROWNING BROTHERS COMPANY ET AL.

v.

BOSTON & ALBANY RAILROAD COMPANY ET AL.

Submitted October 16, 1916. Decided June 4, 1917.

Following *Griffing v. C. & N. W. Ry. Co.*, 25 I. C. C., 134, rates on motorcycles in less than carloads from eastern points to points west of the Mississippi River, and between points in western classification territory, found to have been unreasonable to the extent that they exceeded one and one-half times the first-class rates. Reparation awarded.

W. M. Langdon for complainants.

John O. Moran for Oregon Short Line Railroad Company and Union Pacific Railroad Company.

George D. Squires for Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are individuals and corporations engaged in the sale of motorcycles at Salt Lake City and Ogden, Utah. By complaint, filed February 14, 1916, they allege that the rates charged by defendants for the transportation of motorcycles in less than carloads from points in Massachusetts, New York, Ohio, Illinois, Minnesota, Wisconsin, and Idaho, to Salt Lake City, Ogden, and Tolston, Mont., and from Ogden to Berkeley, Cal., during the period from February 8, 1911, to November 18, 1912, inclusive, were unreasonable and unjustly discriminatory to the extent that the factors applying in western classification territory exceeded rates based upon one and one-half times first class. Reparation is asked.

Claims covering all of the shipments were presented to the Commission informally within the statutory period. On July 8, August 12, and August 14, 1915, the complainants were advised that the claims covering the shipments which the statements filed with the complaint show were delivered by the Northern Pacific, Oregon Short Line, and the Union Pacific railroads could not be adjusted informally, and attention was called to their right to file a formal complaint. Formal complaint was filed more than two years after the claims presented accrued and, with respect to those shipments which were delivered by the carriers mentioned, more than six months after notice to complainants that formal complaint would be necessary. The claims with respect to the latter shipments must, therefore, be deemed to have been abandoned. *Rule III of Rules of Practice; Meeds Lumber Co. v. F. & G. R. R. Co.*, 38 I. C. C., 490.

There remain for consideration one shipment made by Browning Brothers Company from Ogden to Berkeley, which was delivered by the Southern Pacific Company; five shipments made by the Western Arms & Sporting Goods Company from eastern points to Salt Lake City, which were delivered by the Denver & Rio Grande Railroad; and ten shipments made by the Meredith Auto & Bicycle Company from eastern points to Salt Lake City, which were delivered by the Denver & Rio Grande. On the shipments which originated east of Chicago, Ill., charges were assessed upon basis of one and one-half times first class to Mississippi River crossings and two and one-half times the first-class rate as provided by the western classification in force at the time to destination. On shipments which originated at Chicago and points west charges were assessed on basis of two and one-half times the first-class rate. In *Griffing v. C. & N. W. Ry. Co.*, 25 I. C. C., 134, and other cases in which the rating on motorcycles applicable in the same general territory was considered, we held that a rating of two and one-half times first class on motorcycles in less than carloads was unreasonable to the extent that it exceeded one and one-half times first class. Following these cases, we find, upon the facts of record in this case, that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at one and one-half times the first-class rates contemporaneously in effect; that complainants Browning Brothers Company, Western Arms & Sporting Goods Company, and Meredith Auto & Bicycle Company made the shipments as described and paid and bore the charges thereon at the rates herein found to have been unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The amount of reparation due can not be determined upon the present record, and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified, we shall consider the entry of an order awarding reparation.

As motorcycles in less than carloads have been rated one and one-half times first class in the western classification for more than two years, no order for the future is necessary.

By the Commission.

No. 8719.
RANDOLPH FRUIT COMPANY
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted October 23, 1916. Decided June 2, 1917.

Charges on a mixed carload of oranges and lemons from Lordsburg, Cal., to Everett, Wash., not shown to have been unreasonable. Shipment found to have been overcharged and reparation awarded.

Frederick R. Levee for complainant.

C. W. Durbrow and *F. B. Austin* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the fruit business, with its principal office at Los Angeles, Cal. By complaint, filed February 14, 1916, it alleges that the charges collected on a mixed carload of oranges and lemons shipped June 19, 1915, from Lordsburg, Cal., to Portland, Oreg., diverted in transit to Roseburg, Oreg., thence reconsigned to Medford, Oreg., thence reconsigned to Portland, Oreg., and thence reconsigned to Everett, Wash., were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 28,080 pounds, moved over the lines of the Southern Pacific Company to Portland and the Northern Pacific Railway beyond. Lordsburg is in southern California, Medford is 329 miles south of Portland, and Roseburg is 131 miles north of Medford and intermediate to Portland. The diversion from Portland to Roseburg was ordered before the shipment reached the latter point. After arrival at Roseburg it was reconsigned to Medford, which necessitated a back haul. At Medford the shipment was reconsigned to Portland and moved to that point through Roseburg. At Portland it was reconsigned to Everett by way of Seattle, Wash. Charges aggregating \$484.14 were collected as follows: \$186.03, at a rate of 66½ cents, from Lordsburg to Roseburg; \$115.13, at a rate of 41 cents, from Roseburg to Medford; \$84.24, at a rate of 30 cents, from Medford to Portland; \$84.24, at a rate of 30 cents, from Portland to Everett; \$10 for switching from East Portland to Portland; and \$2.50 for switching and \$2 demurrage at Portland. The switching and the demurrage charges are not attacked. All the rates charged were the legally established inter-

state local rates, except the one from Roseburg to Medford. The rate legally applicable for that movement was 30 cents, and the shipment therefore was overcharged \$30.89.

A combination rate of 84 cents applied from Lordsburg to Everett, composed of 74 cents to Seattle and 10 cents beyond. The Southern Pacific's tariffs provided for free reconsignment of carload shipments of fresh fruit at the through rate from point of origin to final destination if the reconsigning instructions were filed with the carrier's agent before the car arrived at the first destination, or within 96 hours after 7 a. m. of the day following arrival and before delivery of the car at the first destination. If instructions were not filed within the time limit specified, or a back haul was involved, the combination of the rates to and from the reconsigning point became applicable.

Complainant's principal contention is that it was unreasonable to assess the local rates, and that reasonable charges should not have exceeded those which would have accrued at the 84-cent rate to Everett plus a rate of 10 cents per mile for the transportation between Roseburg and Medford in both directions. It is stated that certain carriers in the western territory allow free back hauls of as much as 200 miles on reconsigned shipments of fruit and protect the through rates from points of origin to destinations; that other carriers charge 10 cents per car-mile for back hauls; and that the Southern Pacific allows reconsignment of shipments of fresh fruit at San Francisco and Oakland, Cal., to certain points of destination which involve an out of line haul of nearly 100 miles at a charge of \$15 per car. Defendants stated that the charge of \$15 per car for reconsignment at San Francisco and Oakland is unreasonably low; that those points are located off the direct line of the Southern Pacific extending north and south; that this reconsignment arrangement and charge were established to assist fruit shippers in the marketing of their fruit, and that the back hauls are performed under circumstances entirely dissimilar to those here considered.

Complainant also contends that the combination on Portland was improperly applied because the shipment was not detained at that point beyond the period within which it could have been reconsigned at the through rate from the prior point of reconsignment to Everett. Complainant's witness stated that complainant received advice by wire from its representative at Portland that the shipment had been ordered reconsigned within the limited period to entitle it to the through rate claimed. This is disputed by defendants. No one was present at the hearing who had any first-hand knowledge of the transaction, and the record does not warrant a finding that the combination on Portland was improperly applied.

Substantially no evidence was adduced to show that any of the local rates legally applicable were unreasonable.

We find that the charges legally applicable on this shipment are not shown to have been unreasonable, but that the charges collected for the movement from Roseburg to Medford were illegal to the extent that they exceeded the charges that would have accrued at a rate of 30 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found to have been illegal; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate legally applicable; and that it is entitled to reparation in the sum of \$30.89, with interest.

An appropriate order will be entered.

No. 8905.¹

UNITED STATES BREWING COMPANY OF CHICAGO

v.

MICHIGAN CENTRAL RAILROAD COMPANY.

Submitted September 29, 1916. Decided June 5, 1917.

Rate on empty beer containers from Gary, Ind., to Chicago, Ill., found to have been unreasonable. Reparation awarded.

Daniel G. Moore for complainants.

D. P. Connell for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in the manufacture and sale of beer, with their principal places of business at Chicago, Ill. By complaints, filed May 25 and 26, 1916, they allege that defendant's sixth-class rate of 6.3 cents per 100 pounds charged for the transportation of various carloads of empty beer containers from Gary, Ind., to Chicago during the period from March 15 to July 6, 1915, inclusive, was unreasonable to the extent that it exceeded 4.2 cents per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

¹ The proceeding also embraces complaint in No. 8905 (Sub-No. 1), *Bartholomae & Roessing Brewing & Malting Company v. Same*.

All of the shipments moved over defendant's line as alleged, approximately 30 miles. Charges were collected on 17 carloads of beer containers shipped by the United States Brewing Company of Chicago, in the sum of \$352.14, based on an aggregate weight of 558,940 pounds; and on 9 carloads shipped by the Bartholomae & Roesing Brewing & Malting Company in the sum of \$127.58, based on an aggregate weight of 202,500 pounds. The 6.3-cent rate charged was legally applicable.

Prior to March 15, 1915, there was in effect a commodity rate of 4.2 cents, minimum 23,000 pounds. On that date defendant canceled the commodity rate, leaving in effect the sixth-class rate of 6.3 cents, minimum 16,000 pounds, applied to the shipments in question. At the time of movement the 4.2-cent rate was in effect from Gary to Chicago over other routes. On July 10, 1915, defendant reestablished the rate of 4.2 cents, minimum 23,000 pounds, over the route of movement. Based on the applicable minima, the 6.3-cent rate charged yielded 33.6 cents per car-mile; the 4.2-cent rate, in effect prior and subsequently to the movement, 32.2 cents.

The actual weights of the shipments ranged from 18,500 to 36,820 pounds, the average being 29,286 pounds. Based on this average weight, the 4.2-cent rate yields 41 cents per car-mile; the 6.3-cent rate, 61.5 cents per car-mile. As the rate assailed represents an increase since January 1, 1910, the burden of justifying its reasonableness rests upon defendant. In its answer defendant admitted the unreasonableness of the increased rate and expressed willingness to make reparation.

We find that the rate charged on the shipments in question was unreasonable to the extent that it exceeded 4.2 cents per 100 pounds; that complainants made the shipments as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that they were damaged to the extent of the difference between the charges paid and those that would have accrued at the rate of 4.2 cents per 100 pounds; that the United States Brewing Company of Chicago is entitled to reparation in the sum of \$96.10, with interest; and that the Bartholomae & Roesing Brewing & Malting Company is entitled to reparation in the sum of \$40.64, with interest.

An order awarding reparation will be entered, but as the rate of 4.2 cents has been in effect for more than one year no order for the future is necessary.

No. 8881.

W. R. ADAMS

v.

COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

Submitted September 26, 1916. Decided June 2, 1917.

Through rate on carloads of wool in sacks from Slater, Wyo., to Cleveland, Ohio, found to have been and to be unreasonable to the extent that the rate charged for the haul from Slater to the Mississippi River exceeded the rate subsequently established over the route of movement and now in effect. Reparation awarded.

W. H. Young for complainant.

George Williams for Colorado & Southern Railway Company and Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, W. R. Adams, is engaged in the hide, wool, and fur business at Fremont, Nebr. By complaint, filed April 27, 1916, he alleges that the rate charged by defendants for the transportation in August, 1915, of six carloads of wool, in sacks, from Chugwater, Wyo., to Cleveland, Ohio, was unreasonable, unjustly discriminatory, and unduly prejudicial, as compared with the rate from Chugwater to Boston, Mass. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipments, aggregating 205,711 pounds, originated at Slater, Wyo., a nonagency station, located on the Colorado & Southern Railway a few miles north of Chugwater and taking the same rate. The shipments which were originally billed to Omaha, Nebr., and subsequently, under tariff authority, reconsigned to Cleveland, moved over the Colorado & Southern through Chugwater to Denver, Colo.; Chicago, Burlington & Quincy Railroad to Chicago, Ill.; Baltimore & Ohio Railroad thence to Cleveland, where they were turned over to and switched by the Wheeling & Lake Erie Railroad to the point of delivery in Cleveland. Charges were collected in the sum of \$2,908.74 at a through rate of \$1.414, composed of \$1.02 from Slater to the Mississippi River, and 39.4 cents beyond. A proportional rate of 82 cents contemporaneously applied and still applies on the same commodity from all Wyoming points on the Colorado & Southern to the Mississippi River when destined to points in Atlantic

seaboard territory or east of the Buffalo, N. Y.-Pittsburgh, Pa., line. Both the 82-cent and the \$1.02 rates above mentioned became effective June 1, 1912. The rate east of the river was and is the same as that charged on these shipments, 39.4 cents. Effective October 1, 1916, the 82-cent proportional rate was also made applicable to the Mississippi River on shipments from points on the Colorado & Southern destined to Cleveland. Complainant expresses satisfaction with the present rate, and the only question remaining is one of reparation. Defendants admit that there was and is no justification for a higher rate to the Mississippi River on shipments destined to Cleveland than on shipments destined to points in Atlantic seaboard territory, the character of service performed by the carriers west of the river being the same in each instance; and that the rate charged was unreasonable to the extent that the component charged west of the Mississippi River exceeded 82 cents. They are willing to make reparation on that basis. The charging of higher rates on this traffic to Cleveland than to farther distant points to which Cleveland is directly intermediate was in violation of the long-and-short-haul rule of the fourth section. This violation has been corrected, as stated.

The record does not justify a finding of unjust discrimination or undue prejudice.

Upon the facts disclosed we find that the through rate charged was and for the future will be unreasonable to the extent that the component thereof applicable to the transportation from Slater to the Mississippi River exceeded or may exceed the component contemporaneously applicable on shipments destined to Atlantic seaboard territory. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that he has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that he is entitled to reparation in the sum of \$411.41, with interest.

An appropriate order will be entered.

No. 8882.

CYRUS C. SHAFER LUMBER COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted January 25, 1917. Decided June 5, 1917.

Following the principle applied in *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114; *Held*, That defendants should permit the reconsignment of carload shipments of ash lumber from Cairo, Ill., to Hartford, Conn., at Hartford to Boston, Mass., on basis of the through rate from Cairo to Boston, plus a maximum charge of \$5 per car for the extra services incident to the reconsignment. Reparation awarded.

H. J. Aldworth for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business at South Bend, Ind., with a concentrating yard at Cairo, Ill. By complaint, filed May 18, 1916, as amended, it alleges that the charges assessed by defendants for the transportation of a carload of ash lumber from Cairo to Hartford, Conn., thence reconsigned to Boston, Mass., were excessive and unreasonable. Reparation is asked. The claim was presented to the Commission informally April 29, 1915. Rates are stated in cents per 100 pounds.

The shipment, weighing 61,200 pounds, was consigned by complainant to itself at Hartford and moved April 23, 1914, over the St. Louis, Iron Mountain & Southern Railway, Toledo, St. Louis & Western, New York, Chicago & St. Louis, Lehigh Valley, and New York, New Haven & Hartford railroads, the latter hereinafter called the New Haven. Prior to the arrival of the shipment at Hartford on May 8, 1914, complainant ordered it delivered to the Guernsey-Westbrook Company at that point. On May 9, the New Haven received written instructions from the Guernsey-Westbrook Company to forward the car to Boston. Upon arrival at Boston the car was placed for delivery in the yards of the New Haven and, after \$3 demurrage had accrued, the shipment was reconsigned to Mystic wharf, Boston. Charges were collected in the sum of \$244.75, based on rates of 29 cents to Hartford; 5½ cents to Boston, New Haven yard; 2 cents to the tracks of the Boston & Maine Railroad by way

of the Union Freight Railroad; and 3 cents over the Boston & Maine to Mystic wharf; plus the demurrage charge of \$3. The latter charge is not assailed.

Defendants contemporaneously maintained a joint through rate of 29 cents from Cairo to Hartford, which also applied to Boston and Mystic wharf. From Hartford to Boston the New Haven maintained a sixth-class rate of 11 cents, applicable on ash lumber, in carloads. That carrier's tariff provided for reconsignment to stations on its line at one-half the rate from the reconsigning point to the new destination. Where there were no joint rates in effect from original destination to station on connecting line to which reconsignment was desired, it provided that one-half of the rate from the reconsigning point to the junction point with the connecting line would be charged, leaving applicable beyond the junction point the full rate of the connecting line. The New Haven's reconsigning rule was inapplicable to the movement from its yard to Mystic wharf.

Complainant contends that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the joint through rate from point of origin to final destination, plus reasonable charges for the reconsignment services, and cites *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114, wherein we held that where the contents of the car remain unchanged, where the change of destination or route does not involve an out of line haul, and request is made within a reasonable time, reconsignment and diversion on the basis of the through rate from point of origin to new destination, with a fair charge for the extra services performed, are reasonable practices, and that the denial thereof is unreasonable and unlawful.

The request for the reconsignment from Hartford to Boston was made within 24 hours after the arrival of the car at first destination, which, we find, is a reasonable time. Based on $5\frac{1}{2}$ cents, the difference between the through rate and the rate charged, up to Boston, and 61,200 pounds, the weight of the shipment, the expense to the complainant of reconsigning the car at Hartford was \$33.66. We find that \$5 per car is a fair maximum charge therefor.

Defendants were not represented at the hearing, and complainant's witness was unable to state how long the car was held at Boston prior to the receipt of reconsignment instructions, but the tariff governing provided for a demurrage charge of \$1 per car per day or fraction thereof, after the expiration of 48 hours' free time, and as complainant admits that the demurrage charge of \$3 was in accordance with the published tariffs, it would seem that the reconsignment instructions were not placed with the carrier until at least four days after the arrival of the car at Boston. Following

our decision in *Colorado Fuel Co. v. C. & S. Ry. Co.*, 38 I. C. C., 690, wherein we held that a tariff rule prohibiting reconsignment at the through rate after expiration of the first 72 hours from the time of arrival of the shipment at its first destination was not unreasonable, we find that it has not been shown that the additional charges collected because of the reconsignment at Boston were unreasonable.

We further find that the rules of the defendant New York, New Haven & Hartford Railroad Company were unreasonable in that they did not provide for the reconsignment at Hartford on the basis of the joint through rate contemporaneously in effect from the point of origin to Boston, with an additional maximum charge of \$5 for the services rendered in effecting the reconsignment, which rule and charge we find would have been, and for the future will be, just and reasonable; that complainant made the shipment as described and paid and bore the charges thereon up to the New Haven yard at Boston at the rate of $34\frac{1}{2}$ cents per 100 pounds; that such charges were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the joint through rate of 29 cents per 100 pounds plus a charge of \$5 for the services rendered in connection with the reconsignment at Hartford; that complainant has been damaged to the extent of the difference between the charges paid up to the New Haven yard at Boston and the charges which would have accrued on the basis of the rate and charge herein found reasonable; and that it is entitled to reparation in the sum of \$28.66, with interest.

An appropriate order will be entered.

45 I. C. C.

No. 8889.¹

KINNEAR MANUFACTURING COMPANY

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 701.

Submitted November 16, 1916. Decided June 6, 1917.

Rate on a less-than-carload shipment of steel rolling doors and parts from Columbus, Ohio, to Port Arthur, Tex., and on a less-than-carload shipment of steel rolling doors from Columbus to Texas City, Tex., not shown to have been unreasonable or unduly prejudicial. Complaints dismissed.

O. P. Gothlin for complainant.

R. C. Trovillion for Missouri, Kansas & Texas Railway Company; Missouri, Kansas & Texas Railway Company of Texas and its receiver; St. Louis, Iron Mountain & Southern Railway Company and its receiver; and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Fred. G. Wright and *C. S. Burg* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of steel rolling doors, with its principal place of business at Columbus, Ohio. By complaints, filed May 20 and 31, 1916, it alleges that the rate of \$1.162 per 100 pounds assessed by defendants for the transportation of two less-than-carload shipments, one consisting of steel rolling doors and parts and the other of steel rolling doors, from Columbus to Port Arthur and Texas City, Tex., respectively, was unreasonable and unjustly discriminatory. Reparation is asked. Rates are stated in amounts per 100 pounds.

The first shipment, consisting of steel rolling doors and parts, weighed 10,245 pounds. It moved June 25, 1915, as routed, over the Pittsburgh, Cincinnati, Chicago & St. Louis Railway to St. Louis, Mo.; St. Louis, Iron Mountain & Southern Railway to Texarkana, Tex.; Kansas City Southern Railway and Texarkana & Fort Smith

¹ The proceeding also embraces complaint in No. 8908, Same v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al.

Railway to destination. Charges were collected in the sum of \$119.05, based upon the joint through fourth-class rate of \$1.162, legally applicable.

The second shipment, consisting of steel rolling doors, weighed 20,252 pounds. It moved September 27, 1915, as routed, over the Cleveland, Cincinnati, Chicago & St. Louis Railway to St. Louis; Missouri, Kansas & Texas Railway, Missouri, Kansas & Texas Railway of Texas, and Texas City Terminal Company to destination. Charges were collected in the sum of \$235.33, based upon the fourth-class rate of \$1.162, legally applicable.

Complainant's contention that the rate applied was unreasonable and unjustly discriminatory is based upon the allegation that during the period in question the sum of the separately established less-than-carload rates to and beyond New Orleans, La., was 98 cents, composed of the fourth-class rates of 58 cents to New Orleans and 40 cents beyond. But the shipments did not move through New Orleans.

At the time of movement the joint rate applicable by way of New Orleans was the same as that in effect over the routes traversed. Effective December 20, 1915, a less-than-carload commodity rate of 98 cents, equal to the New Orleans combination, was published from Columbus to Port Arthur and Texas City, applicable over the routes traversed as well as through New Orleans. On May 26, 1916, fourth-class rates of 57 cents and 55 cents, which had been found justified in *New Orleans-Texas Rates*, 38 I. C. C., 1, became effective from New Orleans to Texas City and Port Arthur, respectively. On the same date the rates on steel rolling doors from Columbus were correspondingly increased to \$1.13 to Port Arthur and \$1.15 to Texas City, applicable over defendants' lines and by way of New Orleans, and these rates are still in effect.

We have repeatedly held that no presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of the fact that the intermediate rates over another route would make a lower charge. Neither does such a situation raise a presumption of undue prejudice.

We find that the rate assailed is not shown to have been unreasonable or unduly prejudicial, and an order dismissing the complaints will be entered.

That portion of Fourth Section Application No. 701, of F. A. Leland and J. F. Tucker, agents, in which authority is sought to continue rates on steel rolling doors from Columbus to Port Arthur and Texas City lower than the rates contemporaneously maintained from or to intermediate points, was heard with the complaints. The relief desired consists in the maintenance of lower rates from Columbus to Port Arthur and Texas City than from Columbus to Texas common points intermediate thereto.

It developed at the hearing that at the time the application was filed there was no departure from the fourth section, the same rates, \$1.15, fourth class, on less than carloads, and 91 cents, fifth class, on carloads, applying to all the points in question.

Commodity rates of 74 cents, carload, and 98 cents, less than carloads, were established effective November 20, 1915, and December 20, 1915, respectively, from Columbus to Port Arthur and Texas City, these rates equaling combinations of the following class rates contemporaneously in effect: Columbus to New Orleans, 41 cents, sixth class, on carloads, and 58 cents, fourth class, on less than carloads; New Orleans to Port Arthur and Texas City, 33 cents, fifth class, on carloads, and 40 cents, fourth class, on less than carloads. No change was made in the rates to intermediate Texas common points, which were and still are \$1.162, fourth class, on less than carloads, and 91.9 cents, fifth class, on carloads. Violations of the fourth section were thus created. On May 26, 1916, based upon increases in the class rates beyond New Orleans found justified in *New Orleans-Texas Rates, supra*, the commodity rates from Columbus were increased to \$1.13, less than carloads, and 85 cents, carloads, to Port Arthur, and \$1.15, less than carloads, and 86 cents, carloads, to Texas City. These increases, it will be noted, did not eliminate the fourth section violations.

As authority for the fourth section departures, defendants' tariffs show Fourth Section Order No. 3700, and at the hearing defendants' counsel stated that over the route through New Orleans the carriers are required to maintain through rates to Port Arthur and Texas City not in excess of the aggregates of the intermediate rates based on New Orleans and that said order permits defendants to meet such rates over their routes but does not require them to establish the reduced rates to intermediate points. Fourth Section Order No. 3700, however, does not authorize the creation under these circumstances of a departure from the provisions of the fourth section, and the violations in question should be promptly eliminated.

No. 8795.

F. B. RUSSI & COMPANY

v.

OCEAN SHORE RAILROAD COMPANY ET AL.

Submitted October 7, 1916. Decided June 6, 1917.

Rate applied to various carloads of artichokes from Tobin and Vallemar, Cal., to San Francisco, Cal., destined to points in New York, Massachusetts, Pennsylvania, Ohio, and Louisiana, found to have been illegal. Reparation awarded.

J. D. Baker for complainant

McCutchen, Olney & Willard, and *F. F. Thomas, jr.*, for Ocean Shore Railroad Company.

G. D. Squires for Southern Pacific Company; Galveston, Harrisburg & San Antonio Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; and Texas & New Orleans Railroad Company.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is F. B. Russi, engaged in the produce business at San Francisco, Cal., under the name of F. B. Russi & Company. By complaint, filed March 27, 1916, as amended, he alleges that the commodity rate of \$2.60 per net ton charged on 53 carloads of artichokes shipped from Tobin and Vallemar, Cal., to San Francisco, destined to points in New York, Massachusetts, Pennsylvania, Ohio, and Louisiana, during the period from November 25, 1914, to May 27, 1915, inclusive, was illegal to the extent that it exceeded the class C rate of 7½ cents per 100 pounds. Reparation is asked.

The shipments, 44 of which originated at Tobin and 9 at Vallemar, moved to San Francisco by way of the Ocean Shore Railroad, hereinafter called defendant. The charges beyond San Francisco are not questioned. Charges were assessed up to that point based upon a commodity rate of \$2.60 per net ton, minimum 20,000 pounds. A class C rate of 7½ cents per 100 pounds, minimum 24,000 pounds, was contemporaneously in effect on artichokes in carloads from and to the points involved. All of the shipments weighed less than 24,000 pounds. Defendant's tariff containing this rate provided for

the alternative application of class or commodity rates, whichever was the lower, and complainant contends that under this alternative provision the class rate should have been applied. Defendant maintains that the commodity rate was legally applicable; that the present difficulty arose through an error in publication; that the class C rate was never intended to apply on this commodity; and that any interpretation of the tariff should take into consideration the intention of the framers. Defendant also offered evidence purporting to show that the commodity rate was reasonable and that the class C rate was extremely low.

We have repeatedly held that proof of error in the publication of rates does not justify a departure from the published rates, and that the intention of the framers is not controlling. On November 27, 1915, defendant canceled the provision for alternative use of class rates on fresh vegetables, leaving applicable thereon the commodity rate of \$2.60 per net ton.

We find that the rate legally applicable on the shipments involved was the lower class C rate of $7\frac{1}{2}$ cents per 100 pounds from Tobin and Vallemar to San Francisco, and that the rate charged was illegal to the extent that it exceeded the rate named with the minimum of 24,000 pounds applicable. We further find that complainant made the shipments as described and paid and bore the charges thereon based upon the rate herein found to have been illegal; that he has been damaged to the extent that the charges collected exceeded the charges that would have accrued on the basis herein found to have been legal, and that he is entitled to reparation, with interest, from the Ocean Shore Railroad Company. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the Ocean Shore Railroad Company for verification. Upon receipt of a statement so prepared and verified, we shall consider the entry of an order awarding reparation.

No. 8865.

G. W. GATES & COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted October 4, 1916. Decided June 6, 1917.

Rate on carloads of ties from Silverton, Oreg., to Portland, Oreg., consigned to Bans Spur, Oreg., for export, not shown to have been or to be unreasonable. Complaint dismissed.

John P. Stapleton for complainant.

Ben. C. Dey for Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is G. W. Gates, engaged in the lumber business under the trade name of G. W. Gates & Company, with his principal office at Portland, Oreg. By complaint, filed May 8, 1916, he alleges that the rate charged by defendants on two carloads of ties from Silverton, Oreg., to Bans, Oreg., for export, in May, 1915, was unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds, except as otherwise noted.

The shipments consisted of rough fir lumber, consigned to the Columbia Creosoting Company, at Bans, the bills of lading reciting final destination Negapatam, India, via steamship *Konkon Maru*. Silverton is about 46 miles south of Portland, on the line of the Southern Pacific Company; Bans Spur, the destination intended and the point to which the shipments moved, is 9.8 miles north of Portland, on the Spokane, Portland & Seattle Railway. The shipments moved over the line of the Southern Pacific to Portland and of the Spokane, Portland & Seattle beyond. After being creosoted they were delivered to the steamship for transportation to final destination. Charges were collected for the movement from Silverton to Portland on the basis of the local rate of 6 cents. The record does not disclose the rate applied beyond.

Complainant contends that the rate charged was illegal and unreasonable to the extent that the component from Silverton to Portland exceeded 3 cents. When the shipments moved a rate of 3 cents applied on lumber, ties, and sawed timbers in carloads from Silverton to East Portland and Portland (Jefferson street), only, for movement thence by water carriers to foreign countries, domestic ports

through the Panama Canal, and certain California ports on bills of lading containing the following information for policing purposes:

(a) Final destination of shipment.

(b) Name of ocean-going vessel engaged to transport consignments to final destination.

(c) If transfer from cars to boat is to be made direct from cars or dock, so state.

(d) If transfer from cars to boat is to be made through medium of barge, give name of barge company engaged to make transfer and point at which transfer from barge to boat will be made.

The limitations upon the application of the 3-cent rate were designed to prevent the abuse of that rate. When shipments are delivered directly to the steamships or to barges, it is a simple process to obtain record of their clearance; but when delivery is made to connecting lines, it is frequently difficult and sometimes impossible to determine whether or not they are exported.

No evidence was introduced tending to show that the through rate was unreasonable, and the only evidence respecting the 6-cent component was the mere citation of the 3-cent export rate.

We find that the rate legally applicable on the shipments in question for the movement from Silverton to Portland was 6 cents per 100 pounds, which rate is not shown to have been or to be unreasonable. An order dismissing the complaint will be entered.

45 I. C. C.

No. 8855.

C. M. FERGUSON & SON GROCERY COMPANY ET AL.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY
COMPANY ET AL.

Submitted November 21, 1916. Decided June 6, 1917.

Defendants' basis of estimated weights for cases of two dozen No. 2 cans of tomatoes not shown to have been unreasonable. Complaint dismissed.

W. M. Taylor for complainants.

H. T. Wooldridge for St. Louis Southwestern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in the wholesale grocery business at Pine Bluff, Ark. By complaint, filed April 28, 1916, they allege that the charges collected by defendants for the transportation of three carloads of canned tomatoes from Baltimore, Md., to Pine Bluff, during August and September, 1914, based on estimated weights, were unreasonable. Reparation is asked.

Each shipment consisted of 1,000 cases of canned tomatoes. Charges were collected upon the basis of an estimated weight of 44 pounds per case of two dozen No. 2 cans. This estimated weight also applied to canned goods other than tomatoes. The rate of 45 cents per 100 pounds applicable on these shipments was not attacked, the gravamen of the complaint being that the estimated weight upon the basis of which charges were collected was in excess of the actual weight.

Complainants testified that 100 cases out of each of the three cars were weighed, and their average weight found to be 41.84 pounds, 42.57 pounds, and 42 pounds, respectively. They did not produce proof of the actual carload weights but arrived at what they considered the actual weights of the respective carloads by multiplying the average weight shown above by the number of cases in each car. Their claims for reparation are based upon the weights thus computed. It is obvious that these weights are still an estimate.

The delivering carrier admitted the unreasonableness of the charges assessed and stated that it was willing to make reparation on the basis of complainants' estimated weights. On December 9, 1915,

defendants canceled the item providing for the assessment of charges on basis of estimated weights and provided for the use of actual weights. These facts, complainants insist, are sufficient to condemn the charges assessed as unreasonable.

The question here presented was considered in *Allen Brothers Co. v. P., B. & W. R. R. Co.*, Docket No. 6187, unreported, and *Brown Mercantile Co. v. M. & P. R. R. Co.*, Docket No. 7025, unreported, and we there held that—

The utility of handling this class of goods upon a fair and justly ascertained basis of general average weights per standard container is obvious and we are of the opinion that the present basis is reasonable and not unduly discriminatory.

While the present application of actual weights on canned tomatoes might result in charges less than those which accrued on basis of the estimated weights, previously in effect, we have repeatedly held that the voluntary reduction of a rate or basis of charges does not in itself, without proof that the former rate or basis was unreasonable, furnish a sufficient reason for awarding reparation.

We find that the charges collected on the shipments are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

45 I. C. C.

No. 8869.

FREIGHT BUREAU, CHAMBER OF COMMERCE,
MACON, GA.,

v.

MACON, DUBLIN & SAVANNAH RAILROAD COMPANY
ET AL.

Submitted September 11, 1916. Decided June 6, 1917.

Rate on bituminous coal from Cairnes, Ky., to Dry Branch, Ga., not shown to have been or to be unreasonable. Complaint dismissed.

B. Gilham for complainant.

Frank W. Gwathmey for Macon, Dublin & Savannah Railroad Company; Southern Railway Company; Central of Georgia Railway Company; and Georgia Railroad.

William Burger for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is an incorporated commercial association, composed of citizens and shippers at Macon, Ga. By complaint, filed May 8, 1916, it alleges that defendants' rate of \$2.20 per net ton on bituminous coal in carloads from Cairnes, Ky., to Dry Branch, Ga., is unreasonable. A reasonable rate for the future is asked. Rates are stated in amounts per net ton.

Cairnes is a local station on the Cumberland division of the Louisville & Nashville Railroad. Dry Branch is a local station on the Macon, Dublin & Savannah Railroad, 10 miles east of Macon. The distance from Cairnes to Dry Branch by way of defendants' lines through Atlanta, Ga., and Macon is 420 miles.

Complainant contends that the rate in controversy is unreasonable to the extent that it exceeds \$2.15, because the division of 40 cents received by the Macon, Dublin & Savannah is unreasonable to the extent that it exceeds 35 cents and does not bear a just and reasonable relation to the proportions received by the other participating carriers.

Complainant's evidence consists merely of references to rates on coal from Cairnes of \$1.90 to Macon and \$2.20 to Millen, Ga., a farther distant point. It appears that these rates were established under substantially dissimilar circumstances and conditions.

Defendants show that the joint rate assailed compares favorably with the following rates on coal in carloads from Cairnes to other points in Georgia: \$2.20 to Mogul, Roberts, and James, 4, 9, and 14 miles, respectively, from Macon on the Georgia Railroad; Van Buren and Griswold, 7 and 9 miles, respectively, from Macon on the Central of Georgia Railway; and \$2.30 to Avondale, 11 miles from Macon on the Georgia Southern & Florida Railway. Also, that the ton-mile earnings of 5.23 mills under the rate assailed compare favorably with the ton-mile earnings yielded by other rates on coal in carloads from Cairnes and Southern Railway mines in Alabama to many local and competitive points in Georgia and Alabama.

As to complainant's argument that the Macon, Dublin & Savannah division is excessive, we have repeatedly held that divisions of through rates primarily are matters of agreement between participating carriers, and that, while they may be considered as evidence, they are not regarded as conclusive, and ordinarily afford but little basis upon which to determine the reasonableness of joint rates. In *Florida Mercantile Agency v. P. R. R. Co.*, 21 I. C. C., 85, we said:

What the public is primarily interested in is the charge for the service rendered, irrespective of the divisions of the rate, and if the rate itself is reasonable and just the fact that it is unequally divided between the participating lines is not a basis for reduction.

We find that the rate assailed is not shown to have been or to be unreasonable, and an order dismissing the complaint will be entered.

45 I. C. C.

No. 8892.

HARRISON BROTHERS & COMPANY, INCORPORATED,
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted September 9, 1916. Decided June 4, 1917.

Rate on pyrites cinder from Philadelphia, Pa., to Coatesville, Pa., found to have been unreasonable. Reparation awarded.

Edwin F. Sellers for complainant.

Charles R. Webber for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of paint colors, varnish, white lead, and chemicals at Philadelphia, Pa. By complaint, filed May 23, 1916, it alleges that a rate of \$1.40 per long ton assessed for the interstate transportation of 23 carloads of pyrites cinder from Philadelphia to Coatesville, Pa., during the period from July 11, 1914, to November 10, 1914, inclusive, was excessive and unreasonable to the extent that it exceeded 60 cents per long ton. Reparation is asked. Rates are stated in amounts per long ton.

Pyrites fine cinder, a by-product of iron pyrites ore, is used in the manufacture of cheap dry earth paint. Its average market value is \$1.50 per ton, f. o. b. shipping point.

The shipments were routed Baltimore & Ohio Railroad, care of Philadelphia & Reading Railway, and moved over the line of the former to Elsmere Junction, Del., and thence over the line of the latter to destination. Charges were collected at a joint sixth-class rate of \$1.40. At the time of movement commodity rates of 60 cents were maintained over intrastate routes by the Philadelphia & Reading and by the Pennsylvania Railroad. The Philadelphia & Reading provided in connection with its rate for the absorption of the Baltimore & Ohio's switching charges from complainant's loading track to Park Junction, Pa., the point of interchange between these carriers. Subsequently these rates over both intrastate routes were increased to 63 cents. Effective April 15, 1915, the Baltimore & Ohio published a commodity rate of 63 cents applicable over the route of movement.

Complainant asserts that in view of the routing instructions given it assumed that the shipments would move over the Baltimore & Ohio to Park Junction and the Philadelphia & Reading beyond at the 60-cent rate published by the Philadelphia & Reading. The shipments were not misrouted. *McLean Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 349.

The distance from and to the points in question over the route of movement is 57 miles; over the Philadelphia & Reading, 89 miles; and over the Pennsylvania, 38.6 miles. The average weight of the shipments was approximately 70,000 pounds, or 31.25 long tons. At the \$1.40 rate charged the average earnings per car-mile were 76.8 cents; per long ton per mile, 24.5 mills. At the 60-cent rate the average earnings per car-mile would have been 32.9 cents; per long ton per mile, 10.53 mills. Defendants admitted on our special docket that the rate charged was unreasonable and expressed willingness to make reparation on the basis of the 60-cent rate.

The consignee paid the freight charges and deducted from the invoice price 80 cents per ton, the difference between \$1.40, the rate assessed, and 60 cents, the rate it agreed with complainant to pay.

We find that the rate assailed was unreasonable to the extent that it exceeded a rate of 60 cents per long ton; that the complainant made the shipments as described and paid and bore the charges thereon in excess of the charges that would have accrued at the rate herein found to have been reasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

As the 63-cent rate has been in effect for more than a year, no order for the future is necessary.

No. 8777.

BRITTAI^N BROTHERS ET AL.

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted July 22, 1916. Decided June 6, 1917.

Rates on live stock in carloads from Carrier, Covington, Goltry, Ames, Dacoma, and Cold Springs, Okla., to Wichita, Kans., found to have been and to be unreasonable. Reparation awarded.

Rogers McCray for complainants.

Thomas Bond for St. Louis & San Francisco Railroad Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are individuals and copartnerships engaged in the live-stock business in Oklahoma. By complaint, filed April 3, 1916, they allege that defendants' rates for the transportation of 22 carloads of live stock from Carrier, Covington, Goltry, Ames, Dacoma, and Cold Springs, Okla., to Wichita, Kans., during the period from September 6, 1914, to March 2, 1916, inclusive, were unreasonable to the extent that they exceeded the rates in effect prior to June 23, 1914. Reparation is asked and the establishment of reasonable rates for the future. Rates are stated in cents per 100 pounds.

The points of origin, which are local to the St. Louis & San Francisco Railroad, hereinafter called the Frisco, are situated east, west, and south of Enid, Okla., from which point they are from 10 to 148 miles distant. Enid is a junction point of the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, and the Frisco. Wichita is north of Enid, 97.5 miles by way of the Rock Island and 175 miles by way of the Frisco. The shipments consisted of mixed and straight single-deck carloads of cattle and hogs, and mixed carloads of cattle and calves, and cattle, hogs, and calves. They moved as routed by complainants by way of the Frisco to Enid, and the Rock Island beyond, hereinafter called the Frisco-Rock Island route.

The present combination rates on live stock, in carloads, to Wichita from the points of origin in question by way of the Frisco-Rock Island route, which are the same as those applicable when the ship-

ments moved, and upon basis of which charges were collected, are compared in the following table with the joint rates maintained over that route prior to June 23, 1914, and at the time of movement and at present over the Frisco all the way:

From—	Cattle; also hogs in double-deck cars, minimum 22,000 pounds.		Calves, single-deck cars, minimum 17,000 pounds, and double-deck cars, 30,000 pounds.		Hogs, single-deck cars, minimum 17,000 pounds.	
	Past.	Present.	Past.	Present.	Past.	Present.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Carrier.....	13	18	15	19½	15	21½
Covington.....	13	19	15	20½	15	22½
Goltry.....	13	19	15	20½	15	22½
Ames.....	14	19½	16	21½	16	23½
Dacoma.....	14½	21½	16½	23½	16½	25½
Cold Springs.....	20	31½	23	33½	23	38½

Under the tariffs naming these rates charges applicable to live stock in mixed carloads were and are the highest charges that would be applicable to any of the live stock if shipped in straight carloads. It appears that some of the shipments were overcharged and others undercharged. Defendants testified that the basis used for assessing charges on mixed carloads of live stock was that generally applied in this territory.

In *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, we prescribed a distance scale of rates on live stock from Oklahoma points to Wichita, no reference being made therein to mixed carload shipments. The following statement shows the distances to Wichita from the points of origin by way of the Frisco-Rock Island route and the Frisco locally and the rates on cattle, calves, and hogs prescribed by the Commission in the case cited, for distances shown, the rates over the Frisco-Rock Island route being those prescribed for two-line hauls:

From—	Via—	Distance.	Cattle; also hogs in double-deck cars, minimum 22,000 pounds.	Hogs or calves in single-deck cars, minimum 17,000 pounds.
		Miles.	Cents.	Cents.
Carrier, Okla.....	Frisco & Rock Island.....	107.5	15½	17½
	Frisco.....	185	16½	19½
Covington, Okla.....	Frisco & Rock Island.....	115.5	16	18
	Frisco.....	193	17½	19½
Goltry, Okla.....	Frisco & Rock Island.....	115.5	16	18
	Frisco.....	193	17½	19½
Ames, Okla.....	Frisco & Rock Island.....	118.5	16	18
	Frisco.....	196	17½	20
Dacoma, Okla.....	Frisco & Rock Island.....	141.5	17½	19½
	Frisco.....	219	18½	21½
Cold Springs, Okla.....	Frisco & Rock Island.....	245.5	22½	26½
	Frisco.....	323	24	27½

The rates in effect over the Frisco-Rock Island route prior to June 23, 1914, were, and the present rates over the Frisco locally are, lower than the rates prescribed in the case cited, while the present rates over the Frisco-Rock Island route are higher.

Complainants desire the reestablishment over the Frisco-Rock Island route of the rates formerly in effect because of the more frequent and expeditious service from Enid to Wichita by way of the Rock Island than by way of the Frisco. There is a satisfactory daily service for live-stock shipments from Enid to Wichita over the Rock Island, but only one train a week over the Frisco, in which it is practicable to ship live stock. Shipments from the points of origin to Wichita over the Frisco move through Enid. The distance from Enid to Wichita is 77.5 miles less over the Frisco-Rock Island route than over the Frisco all the way. It appears that shipments moving over the Frisco-Rock Island route arrive at Wichita from six to eight hours earlier than do shipments over the Frisco. Complainants testified that it was necessary to ship over the Frisco-Rock Island route in order to get their stock to market in good condition, and that while some of these shipments were made before the shippers learned of the cancellation of the joint rates, others were routed over the Frisco-Rock Island route with knowledge that the rates applicable were higher than over the Frisco locally.

The rates assailed represent increases subsequently to January 1, 1910, and the burden of justifying them rests upon the defendants. The Rock Island was not represented at the hearing. The Frisco stated that it caused the cancellation of the former joint rates in order to retain the long haul on traffic which it originates. It points out that its local rates are the same as the former joint rates and contends that its service is adequate and its route not unreasonably circuitous. Its witness testified that the establishment of its present local rates to Wichita upon a lower basis than that prescribed in the case cited was compelled by rail competition.

In a supplemental proceeding in *Investigation of Alleged Unreasonable Rates on Meats, supra*, 23 I. C. C., 656, 658, it was shown that the carriers in applying the distance scale prescribed in the original report had not used the direct line when that was made up of two or more different lines of railway, but had applied that scale to their own circuitous route, and we were asked to prescribe through routes and joint rates by way of the direct line. We there said:

The statute provides that in establishing joint rates and through routes each carrier against which the order is made shall be given the benefit of the long haul by its own line "unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established." We can not, therefore, establish in every case a

through route and joint rate, but must work under the limitation imposed by the act of Congress, as above set forth.

The transportation of live stock demands, above almost any other kind of freight, expedition in service. Cattle or other live animals should be gotten to market at the earliest practicable moment and with the least possible railroad haul. Considering, therefore, the nature of the transportation, almost any additional length of haul would render the route unduly circuitous and would justify us in establishing a joint rate over the direct line even when a two-line haul was involved.

We find that the rates assailed on live stock, in straight or mixed carloads, were, are, and for the future will be unreasonable to the extent that they exceeded and may exceed the rates prescribed in *Investigation of Alleged Unreasonable Rates on Meats, supra*, for like distances, used in connection with defendants' present tariff provisions prescribing the method for assessing charges on mixed carload shipments, which latter provisions are not shown to have been or to be unreasonable. We further find that the complainants made the shipments as described and paid and bore the charges thereon at the rates herein found to have been and to be unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation. The overcharges should be included in the statements and will constitute a part of the reparation due complainants. The outstanding undercharges may be waived.

An appropriate order will be entered.

No. 8708.

H. FRIEDMAN

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted October 17, 1916. Decided June 2, 1917.

Rates on cotton mattress stock in less than carloads from Chickasha, Okla., to Sioux City, Iowa, found to have been and to be unreasonable to the extent that they exceeded 95 cents per 100 pounds. Reparation awarded.

B. H. Brown for complainant.

J. L. Goree for Chicago, Rock Island & Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the manufacture of mattresses at Sioux City, Iowa, under the name of Union Mattress Company. By complaint, filed March 6, 1916, he alleges that the rates charged by defendants for the transportation of 17 less-than-carload shipments of cotton mattress stock from Chickasha, Okla., to Sioux City, during the period from January 30, 1914, to December 6, 1915, both dates inclusive, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. The claim on the shipments which moved prior to August 22, 1914, was presented to the Commission informally February 9, 1916. The claim for reparation on one shipment which was delivered February 9, 1914, is barred by the statute of limitations. *Navassa Guano Co. v. C., M. & St. P. Ry. Co.*, 39 I. C. C., 171. Rates are stated in amounts per 100 pounds.

Of the remaining 16 shipments, 13 moved from Chickasha to Sioux City over the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, and the Chicago & North Western Railway, hereinafter called the North Western; 12 by way of Des Moines, Iowa, 865 miles; and 1 by way of Council Bluffs, Iowa, 669 miles. Charges were assessed at rates of \$1.35, \$1.28, and \$1.25. The joint first-class rate of \$1.35 was legally applicable, and some of the shipments were therefore undercharged. The other three moved to Kansas City by way of the Rock Island and beyond to Sioux City by way of the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, 757 miles. No joint rate was in effect over the route traversed, and charges were assessed on one of these ship-

ments at the legally applicable combination rate of \$1.28, composed of a commodity rate of 65 cents from Chickasha to Kansas City; a transfer charge of 3 cents at Kansas City; and the first-class rate of 60 cents from Kansas City to Sioux City; on the other two at a rate of \$1.25. The latter were undercharged 3 cents per 100 pounds. The defendants stated that corrections for all undercharges either had been or would be made.

A combination rate of 99 cents was contemporaneously maintained over defendants' lines, composed of a commodity rate of 75 cents from Chickasha to Council Bluffs and the first-class rate of 24 cents from Council Bluffs to Sioux City. On August 24, 1916, the defendants established a joint rate of 95 cents on mattress stock, any quantity, from Chickasha to Sioux City, applicable by way of the Rock Island and Burlington lines through St. Joseph, Mo., 695 miles, and by way of the Rock Island and North Western lines by way of Lincoln, Nebr., 711 miles. Complainant contends that a reasonable and nondiscriminatory rate on all of the shipments should not have exceeded 95 cents, and submitted the following comparisons of various rates on the same commodity, in less than carloads, from Chickasha to other points in the same general territory, by way of the Rock Island and its connections:

From Chickasha to—	Distance.		Rate.
	Miles.	Cents.	
Kansas City, Mo.....	413	65	
Omaha, Nebr.....	567	75	
Council Bluffs, Iowa.....	571	75	
Des Moines, Iowa.....	642	76	
St. Louis, Mo.....	714	76	
Peoria, Ill.....	841	78, 5	
Minneapolis, Minn.....	920	93	
Chicago, Ill.....	932	81	

Complainant stated that he is in active competition with mattress manufacturers located at Omaha, Des Moines, and Minneapolis, but the record fails to sustain the allegation that unlawful discrimination or prejudice exists. No evidence was offered by the defendants.

We find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded and may exceed 95 cents per 100 pounds; that complainant made the shipments as described, and paid and bore the charges thereon at the rates herein found unreasonable; that he has been damaged to the extent of the difference between the charges collected and the charges that would have accrued at the rates herein found reasonable; and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing the details of the ship-

ments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 917.

WASHED COAL WEIGHTS.

Submitted January 6, 1917. Decided June 4, 1917.

Proposed rule providing for the collection of charges on washed coal, in carloads, from Alabama mines to points in the south and west, on basis of actual net weight ascertained at points of shipment found not justified, and suspended tariff required to be canceled.

Eugene McAuliffe for St. Louis-San Francisco Railway Company, Louisville & Nashville Railroad Company, Illinois Central Railroad Company, and New Orleans & Northeastern Railroad Company.

W. M. Barrow, R. P. Hyams, and R. D. Reeves for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By a tariff, filed to take effect September 13, 1916, respondents proposed to establish in connection with the rates on washed coal from stations in Alabama on the St. Louis & San Francisco Railway, hereinafter called the Frisco, and the Birmingham Southern Railroad; also from Memphis, Tenn., and related points to New Orleans, La., and other points in the south and west, a rule the material portion of which reads as follows:

On shipments of washed coal from mines named herein, actual net weights as ascertained at point of shipment will govern, * * *.

Upon protests by W. G. Coyle & Company and Robert P. Hyams Coal Company, dealers in coal at New Orleans, the tariff was suspended until July 11, 1917.

The Frisco serves a number of mines in Alabama which ship large quantities of washed coal to interstate destinations. A considerable portion of this coal is transported by that carrier and its connections, including the Illinois Central and the New Orleans & Northeastern

railroads, to points in the Mississippi Valley, principally to New Orleans. The evidence was confined largely to the movement of washed coal from Alabama mines to New Orleans.

Under the present practice shipments of washed coal from Alabama mines are weighed near the mines or in transit, and, upon request of consignee, are reweighed at destination. Respondents' tariffs provide that if there is a variance of more than 1 per cent, with a minimum variation of 500 pounds, in the initial weight and the weight ascertained by reweighing at destination, the freight charges shall be adjusted on basis of the weights ascertained at destination.

The coal is first screened from mine-run coal and is then passed through washers of various designs, which separate the fire clay, slate, etc., from the coal by a process which involves a complete submersion of the coal in water. The washed coal, thoroughly drenched with water, is usually elevated to storage bins and from these bins discharged by gravity into cars for transportation. In some instances coal is washed in what is known as sluice washers and discharged thence into cars through the medium of a stream of water, which is permitted to waste through the body of the car. The washing of coal increases its value about 25 cents per ton. Some coal is unsalable unless washed.

Through leakage of the water, which also carries with it a portion of the fine coal, the weights of washed coal obtained at or near points of origin decrease materially before destination is reached. This loss varies in amount, depending upon weather conditions, character and size of coal washed, interval between the time it is washed and the time it is weighed, the distance of the scales from the mines, and the kind of equipment used for transporting the coal.

In New Orleans substantially all coal, except that for domestic purposes, is sold on basis of weights ascertained by weighing the coal at point of delivery over scales of the consumers. There is no general demand for the reweighing of dry coal, nor is there any demand for reweighing washed coal at points other than New Orleans. A considerable portion of the washed coal from Alabama mines to New Orleans is reweighed at destination at the request of consignees and the freight charges adjusted on the basis of such weight. Several coal companies at New Orleans, including the protestants, have standing orders with the carriers to reweigh all washed coal. In some instances claims are filed with the carriers for loss of coal in transit when the difference between the initial weight and destination weight exceeds the amount of the tolerance provided for by respondents' tariffs. Some consignees file such claims when the difference exceeds 2.5 per cent of the initial weight; others, when the difference is in excess of 5 per cent; while still others make no claim for revision of freight

charges or loss of coal in transit unless obvious error of weight is apparent, or the car and contents have met with an accident en route. A witness for the Frisco testified that the publication of the proposed rule was influenced largely by the fact that, with the exception of shipments to New Orleans, there is no demand for destination weights, and that with respect to a considerable portion of the shipments to New Orleans there is no such demand.

A witness for respondents testified that the conditions surrounding the loading and weighing of washed coal in Alabama are entirely different from those at mines in other coal fields. Operators of mines in coal fields other than in Alabama have installed track scales in the immediate vicinity where the washed coal is loaded into cars, thus making it possible to weigh the loaded car immediately upon completion of the loading. From the weight obtained on these scales an arbitrary deduction for excess water in the coal, based upon previous tests, is made under tariff provision. It is said that by this method reasonably accurate point of origin weights can be secured, which are rarely questioned at destination, except in cases of apparent error in billing or loss of contents en route. It was testified that not a single mine located on the Frisco in Alabama is equipped with track scales in such locations as will permit of weighing of washed coal immediately after the completion of loading; that the service of a locomotive is invariably required to transport the loaded car from the mine or washer to the track scales; and that the initial weights on shipments from certain mines is obtained many miles distant therefrom. Respondents state that the intervals between loading and weighing coal at the Alabama mines vary from a few minutes to one or more days, thus making it impossible to establish a uniform percentage of deduction for water in the coal at points of origin.

Both respondents and protestants filed exhibits to show the result of tests made by them to ascertain the variations between origin and destination weights on shipments of washed coal from Alabama mines to New Orleans. Respondents' exhibits show that the average net loss on 186 carload shipments, reweighed by the Illinois Central, was 1,946 pounds per car, or 1.94 per cent. Protestants' exhibits cover all shipments, 2,882 carloads, received by them during the period of one year, and show that the net loss was approximately 3.07 per cent. Respondents' and protestants' exhibits show that on some shipments the destination weights were greater than those obtained at point of origin, the differences ranging from 200 to 9,800 pounds. A large majority of the shipments, however, show lower weights at destination than at points of origin, the differences ranging from 100 pounds to 32,700 pounds. Neither the variations in weight shown by respondents nor those shown by protestants correctly rep-

resent the true differences between the actual weights at points of origin and destination. It appears that in some instances there had been an arbitrary deduction of 7 per cent at point of origin on account of excess water in the coal, for which there was no tariff authority; as to some of the shipments 24 hours to 6 days intervened between the loading and the first scaling; that some of the cars left the mines under fictitious weights representing 110 per cent of the stenciled capacity of the car, and yet when weighed at New Orleans were shown to contain more coal than the maximum physical carrying capacity of the car; and in many instances the weights shown at point of origin were manifestly erroneous.

Another test was made with respect to a car of washed slack coal which originated at Sipsey, Ala., November 8, 1916, and which was initially weighed at that point. It was reweighed 1 hour after the initial weighing on the same scales and showed a loss of 500 pounds. It was transported to Amory, Miss., 111 miles, and there reweighed November 11, 1916, showing a further loss of 4,100 pounds, a total loss of 4,600 pounds, or 4.76 per cent in 65 hours. At Amory water was still dripping from the car. A further test was made by respondents and employees of the coal mine, jointly, of three carloads of three-fourths inch washed slack coal, loaded in wooden hopper cars at Dora, Ala., in October, 1913, during favorable weather conditions. The cars were weighed at scales located about one-third of a mile from the coal washer 15 minutes to 22 minutes after they were loaded. The cars were then sidetracked under care of watchmen, and reweighed at intervals during a period of 362 hours. At the expiration of 26 hours the loss in weight averaged 5.35 per cent of the net weight of the coal; at the end of 166 hours water had stopped dripping from the car and the loss shown on reweighing was 7.07 per cent; and at the end of 316 hours the percentage of loss by evaporation or drainage was increased to 7.74 per cent. Subsequent reweighings showed no further loss.

Respondents virtually admit that the suspended rule would not be equitable under the varying conditions surrounding the washed coal, but they urge that until the producers of washed coal in Alabama provide scaling facilities immediately adjacent to the points of loading that will permit the making of proper initial deductions on account of water in the car, the carriers should be authorized to publish a provision in their tariffs, applicable on washed coal, to the effect that weights obtained at points of origin or first intermediate track scales should govern at destination unless obvious error in billed weight or actual loss of coal in transit is shown, subject to a tolerance of 1 per cent of the lading, with a minimum of 500 pounds, to cover variation between track scales, light weight of cars, etc., and

an additional tolerance of 5 per cent to include difference in weight due to the addition or loss of moisture occurring while the shipment is in transit.

Protestants urge that their figures are accurate and constitute sufficient data upon which to base a uniform deduction rule satisfactory to all concerned. Protestants' exhibits, as stated, show shrinkage of about 3 per cent in weight on shipments to New Orleans, and they contend that an arbitrary deduction of $2\frac{1}{2}$ per cent should be made from the weights ascertained at initial points for this shrinkage. They urge that this deduction for shrinkage should be applied uniformly to the relatively few sizes of washed coal produced in Alabama, and assert that there is no necessity for a complicated rule graduated according to the size of coal, such as applies in territories where many sizes of coal are produced. They suggest the following rule:

On shipments of washed coal a deduction of $2\frac{1}{2}$ per cent for moisture from the actual net weight as ascertained on the nearest to the mines track scales will be made when cars are weighed within 24 hours after the coal is washed.

No deduction will be made if otherwise weighed en route or if weighed more than 24 hours after the coal is washed.

Agents at billing (or weighing) points will show the gross, tare, and net weights and deductions for moisture (if any) on face of waybills.

A similar rule is now in effect on the Central of Georgia Railway, the only difference being that the rule of the latter carrier specifies the weighing points.

Protestants' exhibits are confined to what is termed big seam coal, and may not be representative of the other kinds of coal produced in the same territory.

In *In re Weighing of Freight by Carriers*, 28 I. C. C., 7, we said, on page 26:

Where coal is wet in process of preparation for shipment so that the moisture does not become at any time a part of the coal itself but soon evaporates, there would seem to be strong reason why a proper deduction should be made from the weight ascertained at the mine.

The "National Code of Rules Governing the Weighing and Re-weighing of Carload Freight," which was indorsed by us June 9, 1914, and recommended to be made effective on interstate transportation throughout the country, reads, in part, as follows:

Section E. The tolerance shall be 1 per cent of the lading, with a minimum of 500 pounds on all carload freight, including coal and coke. * * *

NOTE.—The tolerance on coal and coke does not include difference in weight due to evaporation, which shall be determined and published in initial carrier's tariff.

Apparently the present rule operates in some instances against the carriers, depriving them unjustly of revenues to which they are entitled and requiring them to entertain questionable claims for loss

of coal in transit. On the other hand, it is unreasonable to require shippers to pay freight charges on the basis of the point of origin weight when, as the record herein shows, a material portion of that weight is lost before or shortly after the shipment begins to move.

The varying intervals of time between the washing of the coal and the weighing of it at point of origin, together with the fact that some grades of Alabama coal retain moisture a longer period than others, renders exceedingly difficult the fixing of arbitrary deductions for loss of moisture, and upon this record it would be impossible.

Protestants suggest the weighing of coal in transit at points substantially equidistant from points of origin and destination, but such a method is criticized by respondents on the ground that some cars are by mistake loaded too heavily for safe carriage, while others are loaded under the marked capacity of the cars, which are the tariff minima; and that the observance of the rule suggested would make the correction of these loading errors virtually impossible. Respondents and interested shippers should cooperate with a view to formulating a satisfactory rule for the determination of the weights upon which to collect freight charges on washed coal, consistent with our suggestions in *In re Weighing of Freight by Carriers, supra*, and embodying the general principle laid down in the rule of the Central of Georgia referred to above.

We find that the proposed rule has not been justified, and an order will be entered requiring its cancellation.

45 I. C. C.

No. 8765.
CLOSSET & DEVERS
v.
NORTHERN PACIFIC RAILWAY COMPANY.

Submitted October 4, 1916. Decided June 5, 1917.

Double first-class rate on a carload of tea in bags from Seattle, Wash., to Portland, Oreg., not shown to have been unreasonable. Complaint dismissed.

William C. McCulloch for complainant.
H. E. Still and *R. C. Fyfe* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale tea and coffee business at Portland, Oreg. By complaint, filed March 29, 1916, it alleges that the double first-class rate of 60 cents per 100 pounds charged by defendant for the transportation of a carload of tea, in bags, shipped December 3, 1915, from Seattle, Wash., to Portland, was unreasonable and unjustly discriminatory to the extent that it exceeded the first-class rate of 30 cents per 100 pounds, applicable on tea in boxes, caddies, or chests. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in cents per 100 pounds.

The shipment consisted of 690 bags, weighing 37,300 pounds, and charges were collected on the basis alleged. The tea in question, which had been salvaged from a fire at Seattle, was packed in bags for the convenience of the shipper. It is ordinarily shipped in chests or caddies. At the time of movement the western classification prescribed the first-class rating on tea in boxes, caddies, or chests, any quantity, and double first-class in barrels with cloth tops. Under rule 8 of the classification, unless otherwise provided for therein, freight shipped in crates takes one class higher than in boxes; in bags, one class higher than in crates. There being no specific rating on the commodity in question in bags, the double first-class rating was legally applicable. Effective October 1, 1916, a second-class rating was established in the western classification on tea in barrels, boxes, or in metal cans in crates, in carloads. On October 15, 1916, subsequently to the hearing, a commodity rate of 30 cents, minimum 30,000 pounds, was established from Seattle to Portland on tea, in

sacks or bags, actual value, declared at time and place of shipment, not exceeding 14 cents per pound. The record fails to disclose the value of the tea in question.

Complainant does not attack either the reasonableness of the local rate from Seattle to Portland or rule 8 of the western classification. It contends that from a transportation standpoint there is substantially no difference between tea packed in bags and in the usual manner in wooden containers when shipped in carloads; and urges that the rate charged should not have exceeded the rate on tea, in boxes, contemporaneously in effect from and to the points involved. Tea packed in bags is very susceptible to damage, readily absorbing odors of other commodities which might previously have been transported in the same car, and may properly take a higher rate than tea in boxes.

We find that the rate assailed is not shown to have been unreasonable, and an order dismissing the complaint will be entered.

45 I. C. C.

No. 8922.

FERN GLEN DISTILLING COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted September 16, 1916. Decided June 2, 1917.

Rates on whisky from Fort Smith, Ark., to St. Louis, Mo., not shown to have been unreasonable. Complaint dismissed.

Morris G. Levinson for complainant.

Robert N. Nash for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale whisky business at St. Louis, Mo. By complaint, filed May 22, 1916, it alleges that the class rates charged by defendants for the transportation of a carload of whisky, in glass and in wood, shipped in August, 1914, from Fort Smith, Ark., to St. Louis, were unreasonable. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipment, consisting of 8,365 pounds of whisky in wood and 18,230 pounds in glass, boxed, moved over the St. Louis & San Francisco Railroad. The whisky in glass was charged the first-class any-quantity rate of \$1.10; that in wood, the second-class any-quantity rate of 95 cents. The western classification, which governs, did not provide for mixed carloads of these commodities. There was contemporaneously in effect from St. Louis to Fort Smith a commodity rate of 50 cents applicable on mixed carloads of whisky in wood and in glass, boxed, and, on September 3, 1915, this rate was established in the opposite direction.

Complainant rests its argument in support of the allegation of unreasonableness principally upon the fact that the 50-cent rate, which was contemporaneously applicable in the opposite direction, was subsequently established over the route of movement. It also cited carload rates on apples, potatoes, cottonseed oil, and on cider in wood and in tank cars maintained from and to the points involved. These rates are not properly comparable with the rates charged.

Defendants testified that the 50-cent northbound rate was published to protect this particular shipment, and that there has not been in the past, and they doubted that there would be in the future, any

necessity for this commodity rate. They also testified that they consider the 50-cent southbound rate unduly low. The shipment was in the nature of a return shipment made because of certain prohibition laws.

A rate in one direction in excess of the rates between the same points in the opposite direction does not demonstrate the unreasonableness of the higher rate, especially where it is a class rate and the movement of the particular traffic is not of sufficient volume to warrant the establishment of a commodity rate. *Parlin & Orendorff Co. v. S. P. Co.*, 42 I. C. C., 29. Nor does the voluntary reduction of a rate, supplemented by the willingness of a carrier to make reparation on the basis of the reduced rate, in the absence of supporting proof, necessarily justify an award of reparation.

We find that the rates assailed are not shown to have been unreasonable. An order dismissing the complaint will be entered.

45 I. C. C.

No. 9043.

ALEXANDER SMITH & SONS CARPET COMPANY
v.
BOSTON & ALBANY RAILROAD COMPANY ET AL.

Submitted November 22, 1916. Decided June 5, 1917.

Charges on various shipments of mohair and one mixed shipment of wool and mohair from Boston, East Boston, and East Cambridge, Mass., to Nepperhan, N. Y., found to have been unreasonable. Reparation awarded.

William J. Wallin for complainant.

Parker McColleston for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of carpets and rugs, with its principal office at Yonkers, N. Y. By complaint, filed July 10, 1916, it alleges that the charges collected by defendants for the transportation of various shipments of mohair and one shipment of wool, from Boston, East Boston, and East Cambridge, Mass., to Nepperhan, N. Y., during the period from June 16, 1915, to October 13, 1915, inclusive, were unreasonable and unjustly discriminatory. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments aggregated 2,078,313 pounds of imported mohair and 2,700 pounds of wool. The wool was loaded in a car with 10,713 pounds of mohair. They moved over the Boston & Albany Railroad to Chatham, N. Y., and the New York Central Railroad beyond. Charges were collected at the joint first-class any-quantity rate of 35 cents, governed by the official classification. From tariffs on file with this Commission, however, it appears that the rate assessed was restricted to apply only over the Boston & Albany to Rensselaer, N. Y., and the New York Central by way of Kings Bridge, N. Y., beyond. No joint rate applied over the route of movement, and the combination first-class any-quantity rate on Nepera Park, N. Y., of 48.5 cents, was legally applicable, so that the shipments were undercharged 13.5 cents per 100 pounds.

Mohair is used as a substitute for wool in the manufacture of carpets, and is shipped, like wool, in sacks and in bales. Mohair is somewhat heavier than wool, but is of about the same value per pound.

Prior to October 21, 1915, defendants maintained a commodity rate of 21 cents on wool, in lots of 10,000 pounds or more, from Boston, East Boston, and East Cambridge to Nepperhan by way of Chatham. On that date the 21-cent rate was made applicable also to mohair in lots of 10,000 pounds or more by way of Chatham, and that rate is still in effect on wool and mohair, in straight or mixed shipments. Complainant contends that the rate charged was unreasonable to the extent that it exceeded 21 cents, the rate contemporaneously applicable on wool.

In *National Mohair Growers Asso. v. A., T. & S. F. Ry. Co.*, 23 I. C. C., 180, we held that the rates on mohair from western territory to eastern destinations should not exceed the rates contemporaneously applicable on wool. Defendants admit that as between mohair and wool the circumstances and conditions surrounding their transportation between the points in question are similar to those obtaining in western classification territory, and express willingness to award reparation on the basis of the 21-cent rate.

We find that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at 21 cents per 100 pounds on shipments weighing 10,000 pounds or more; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Collection of the undercharges described down to the basis of the rate found reasonable may be waived.

As the rate herein found reasonable has been in effect for more than a year, no order for the future is necessary.

No. 9044.

INTERNATIONAL HARVESTER COMPANY OF NEW JERSEY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted December 1, 1916. Decided June 2, 1917.

Rate on carloads of sisal fiber from St. Paul, Minn., to Chicago, Ill., found to have been unreasonable. Reparation awarded.

Samuel D. Snow for complainant.

R. H. Widdicombe and *A. F. Cleveland* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged, among other things, in the manufacture of binder twine at Chicago, Ill. By complaint, filed July 8, 1916, it alleges that defendants' rate of 25 cents per 100 pounds on 64 carloads of sisal fiber shipped from St. Paul, Minn., to Chicago, in February and March, 1915, was unreasonable to the extent that it exceeded a rate of 16 cents per 100 pounds applicable in the opposite direction. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved over defendants' lines, 398 miles. The rate applicable was the fourth-class rate of 25 cents. A commodity rate of 16 cents applied from Chicago to St. Paul. On June 1, 1915, the latter rate was established from St. Paul to Chicago and it is still in effect. Some of the shipments were undercharged.

Defendants admit that there are no transportation conditions warranting a higher rate from St. Paul to Chicago than in the opposite direction, and testified that the 16-cent rate was not established earlier from St. Paul to Chicago for the reason that ordinarily there is no such movement of sisal fiber.

Class rates and generally commodity rates from St. Paul to Chicago are the same as those applying in the opposite direction. The rate on binder twine between St. Paul and Chicago was and is 22 cents. The value of the binder twine is said to be 7.5 cents per pound; of the sisal fiber, 4.5 cents per pound. Complainant cited, by way of comparison, an import rate of 18 cents, since increased to 20 cents, on sisal fiber from New Orleans, La., to Chicago, 912 miles.

We find that the rate assailed was unreasonable to the extent that it exceeded 16 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. The collection of the undercharges described may be waived.

As the rates herein found reasonable have been in effect since June 1, 1915, no order for the future is necessary.

45 I. C. C.

No. 9140.

ICHABOD T. WILLIAMS & SONS

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted January 22, 1917. Decided June 2, 1917.

Claim for reparation on a carload of lumber from Rainelle, W. Va., to New York, N. Y., barred by the statute of limitations. Complaint dismissed.

John W. Crandall, Morris Douw Ferris, and Hunt, Hill & Betts for complainants.

Francis R. Cross for defendants.

William Ainsworth Parker for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Thomas Williams and Thomas R. Williams, copartners, engaged in the lumber business at New York, N. Y., under the firm name of Ichabod T. Williams & Sons. By complaint, filed July 28, 1916, as amended, they allege that the charges collected by defendants on a carload of white-oak lumber, shipped March 12, 1914, from Rainelle, W. Va., to New York, were unreasonable in that they were computed on the basis of an erroneous weight. Reparation is asked.

The shipment was delivered to complainants at New York, March 23, 1914. Defendants demanded freight charges in the sum of \$141.84, based upon the applicable rate of 24 cents per 100 pounds and a weight of 59,100 pounds. Complainants contend that the correct weight was 49,000 pounds. On February 25, 1915, they paid \$117.60 of the total charges demanded. The balance of \$24.24 was paid by complainants under protest on July 6, 1916.

The complaint was not filed with the Commission within two years after the shipment was delivered, but complainants contend that the two-year period within which an action may be brought before the Commission to recover reparation begins to run from the date on which the freight charges are paid. Following our decision in *Blinn Lumber Co. v. Southern Pacific Co.*, 18 I. C. C., 430, in which we held that the two-year period begins to run from the date when a shipment is delivered, we find that this claim is barred by the statute of limitations.

An order dismissing the complaint will be entered.

No. 7948.
CITY OF CLARKSDALE, MISS., ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted December 24, 1915. Decided June 2, 1917.

Rates on bituminous coal in carloads from Mercer and De Koven, Ky., and grouped points, and from Benton and Christopher, Ill., and grouped points, to Clarksdale, Miss., not shown to have been or to be unreasonable or unduly prejudicial. Complaint dismissed.

J. L. Barnard and *J. W. Cutrer* for complainants.

R. V. Fletcher for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the city of Clarksdale, Miss., and various individuals, firms, and corporations engaged in business in that city. By complaint, filed April 27, 1915, as amended, they allege that the rates of \$1.80 per net ton charged by defendants for the transportation of bituminous coal, in carloads, to Clarksdale, from Mercer and De Koven, Ky., and grouped points, and from Benton and Christopher, Ill., and grouped points, are unreasonable, unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in amounts per net ton. The decision of this case was postponed pending the final disposition of *Bituminous Coal to Mississippi Valley Territory*, 39 I. C. C., 378.

Mercer and De Koven are local stations on the Illinois Central Railroad, and are grouped with approximately 48 other coal-producing points in western Kentucky, known as Illinois Central Railroad groups 1 and 2. Benton and Christopher, also on the Illinois Central, are grouped with about 40 other coal-producing points in southern Illinois, known as group 3. Clarksdale is a local station on the Yazoo & Mississippi Valley Railroad, 77 miles south of Memphis, Tenn.

The shipments originated at various points in the Illinois and Kentucky groups and moved over the Illinois Central to Memphis; Yazoo & Mississippi Valley thence to Clarksdale. Charges were collected at the joint commodity rate of \$1.80, legally applicable. This rate has been in effect since April 1, 1907, and was blanketed from these mine groups in Illinois and Kentucky to all local stations

on the Yazoo & Mississippi Valley, Penton and Marinette, Miss., to Port Gibson, Miss., including Clarksdale. It also applied to all local stations on the Illinois Central, Toone, Tenn., and Love, Miss., to Tougaloo, Miss., inclusive. This blanket was approximately 225 miles long and included local points on all branch lines of defendants in this territory. Defendants contemporaneously maintained rates of \$1.25 on bituminous coal, in carloads, from the same group mines to Greenwood, Greenville, Leland, Morehead, Stoneville, and Elizabeth, Miss., more distant junction points with the main line of the Southern Railway in Mississippi, to which Clarksdale is directly intermediate from the same points of origin. They also published rates ranging from \$1.50 to \$1.60 to other competitive points in Mississippi and Louisiana, to some of which Clarksdale is also intermediate. These departures from the long-and-short-haul rule of the fourth section were protected by appropriate fourth section applications which were considered and disposed of in *Bituminous Coal to Mississippi Valley Territory, supra*.

Following our decision in *Coal and Coke Rates in the Southeast*, 35 I. C. C., 187, defendants increased their rates on coal from the Kentucky and Illinois mines to Elizabeth, Morehead, Stoneville, Greenwood, Greenville, and Leland, to \$1.40 effective October 1, 1915, and made increases of 15 cents or 20 cents in the rates to other competitive points to which rates lower than \$1.80 were named.

Complainants contend that the rates assailed were unreasonable and unduly prejudicial to the extent that they exceeded \$1.40. The only evidence in support of their contention consisted of showing the lower rates to the more distant points.

Defendants contend that the rates assailed were reasonable; and that the lower rates to more distant points were established to meet the rates of the Southern Railway in Mississippi and the Alabama & Vicksburg Railway and its connections from the Alabama coal fields located much nearer these destination points than the Illinois and Kentucky mines; and are subnormal and not fairly comparable with the rates assailed. The record shows that the rates on coal from certain of the Alabama mines to the main-line junction points of the Southern Railway in Mississippi were uniformly 15 cents lower than defendants' rates from the mines in Illinois and Kentucky to the same junction points. Defendants further assert that the lower rates to certain of the more distant points on the Yazoo and Mississippi rivers were influenced by competition with coal shipped from the Pennsylvania and West Virginia fields to these points by water.

The influences that brought about these rate adjustments are fully set out in *Rates on Bituminous Coal*, 36 I. C. C., 401, and *Bituminous Coal to Mississippi Valley Territory, supra*, and need not be repeated

here. Following our decision in the latter case, defendants readjusted their rates on coal from the mines in Illinois and Kentucky to practically all points in the Mississippi Valley territory, with the result that many of the fourth section departures were corrected. This readjustment resulted in many changes in rates, some increases and some reductions. The present rate to Clarksdale is \$1.65. The rate to Greenville is \$1.50, but this departure from the fourth section is authorized by our order in the case last cited above. The present rates to other junction points with the Southern Railway in Mississippi are the same as or are higher than the rate to Clarksdale.

The rates assailed yielded 5.7 mills per ton-mile from the Illinois mines for an average distance of 315 miles, and 5.28 mills per ton-mile from the Kentucky mines for an average distance of 341 miles.

We find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial. Departures from the provisions of the fourth section, which are covered by appropriate fourth section applications, do not of themselves constitute a basis for an award of reparation.

An order dismissing the complaint will be entered.

45 I. C. C.

No. 9226.

SPAHN & ROSE LUMBER COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted February 2, 1917. Decided June 2, 1917.

Charges legally applicable on a carload of soft coal from Gatliff, Ky., to Parkersburg, Iowa, diverted in transit to Jesup, Iowa, found to have been unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the through rate, plus a charge of \$2 for the extra service incident to the diversion. Defendants authorized to waive collection of certain portions of outstanding undercharge.

S. B. Houck for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber and fuel business, with its principal office at Dubuque, Iowa, and a place of business at Jesup, Iowa. By complaint, filed October 2, 1916, it alleges that the charges collected by defendants on a carload of lump soft coal, shipped November 27, 1913, from Gatliff, Ky., to Jesup, were unreasonable. Reparation is asked. The claim was presented to the Commission informally June 30, 1915. Rates are stated in amounts per net ton.

The shipment was delivered to the Louisville & Nashville Railroad at Gatliff, November 27, 1913, consigned to complainant at Parkersburg, Iowa, and was routed "Louisville, Big Four to Bloomington, Ill., I. C. beyond via E. Dubuque." Subsequently the Louisville & Nashville was requested to divert the shipment to Jesup, a point on the Illinois Central Railroad about 40 miles east of Parkersburg. The diversion was effected by the Louisville & Nashville at Louisville, Ky., and the shipment moved thence by way of the Cleveland, Cincinnati, Chicago & St. Louis Railway to Bloomington, and thence by way of the Illinois Central through East Dubuque to Jesup. The contents of the car remained unchanged and no out of line haul was involved. When the shipment moved a combination rate of \$3.25 applied over the route of movement from Gatliff to Jesup, composed of a rate of \$2.20 to East Dubuque and a rate of \$1.05 beyond. Charges were ultimately col-

lected in the sum of \$135.20, based on a weight of 83,200 pounds at the \$3.25 rate. The tariffs of the Louisville & Nashville permitted reconsignment or diversion at Louisville and at other points on its line, but only on the basis of the rates to and from the point at which the diversion should be effected. Accordingly the rate legally applicable was a combination rate of \$4.65, composed of a rate of 95 cents to Louisville, a rate of \$1.80 from Louisville to Bloomington, and a rate of \$1.90 beyond, on which basis the correct charges would have been \$193.44, so that the shipment was undercharged \$58.24. The tariffs of the Louisville & Nashville now permit the diversion of similar shipments at Louisville on the basis of the through rate, plus a reconsignment or diversion charge of \$2. Complainant contends that the charges legally applicable were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the combination rate of \$3.25, plus a reasonable charge for the extra service incident to the diversion.

Following *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114; 33 I. C. C., 164, which involved the same issue as is here presented, and upon the record in this case, we find that the Louisville & Nashville Railroad Company should have provided for the diversion of the shipment described on the basis of the through combination rate from Gatliff to Jesup of \$3.25 per net ton, plus a reasonable charge for the extra service performed at Louisville; also that \$2 would have been a reasonable maximum charge for the extra service performed. We further find that complainant made the shipment as described and paid and bore the charges thereon. The outstanding undercharge may be waived to the extent of \$56.24, the difference between the charges legally applicable and the charges that would have accrued on the basis herein found reasonable; the remainder should be collected.

In view of the fact that the Louisville & Nashville Railroad now permits reconsignment at the through rate, plus a \$2 reconsigning charge, no order for the future is necessary.

No. 8611.

SUNDERLAND BROTHERS COMPANY

v.

CHICAGO GREAT WESTERN RAILROAD COMPANY
ET AL.

Submitted July 20, 1916. Decided June 6, 1917.

Charges on a carload of gravel from Lanesboro, Iowa, to Omaha, Nebr., found to have been unreasonable to the extent that the switching charges assessed by the Missouri Pacific Railway Company at Omaha exceeded \$6. Reparation awarded.

H. S. Colvin for complainant.

J. G. Morrison for Chicago Great Western Railroad Company.

F. B. Clark for Missouri Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling building materials and other commodities at Omaha, Nebr. By complaint, filed January 17, 1916, it alleges that the charges collected on a carload of gravel shipped from Lanesboro, Iowa, to Omaha, April 21, 1914, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked.

The shipment moved by way of the Chicago Great Western Railroad from Lanesboro to Omaha. It was switched by the Union Stock Yards Company of Omaha to the rails of the Missouri Pacific Railway, which carrier placed it on the industrial track of Pickard's Anchor Concrete Company, hereinafter called the Pickard Company, within the switching district of Omaha.

Complainant's attack is directed specifically against the switching charges of the Missouri Pacific, and the refusal of the Chicago Great Western to absorb more than \$7 per car of connecting lines' switching charges. The Union Stock Yards Company's switching charge of \$2 a car is not attacked. It is approximately 6 miles from the Missouri Pacific's connection with the tracks of the Union Stock Yards Company to the industrial track of the Pickard Company. In the absence of a specific switching charge covering the movement over the Missouri Pacific that carrier collected \$20.52, based on the Nebraska interstate distance rate of 2.75 cents

per 100 pounds, applicable on sand, and a weight of 74,600 pounds. The rate legally applicable was 3 cents per 100 pounds and the shipment was apparently undercharged \$1.86. Of the switching charges collected, \$7 was absorbed by the Chicago Great Western, pursuant to its tariff in effect at the time of movement, and the balance, \$15.52, was paid by complainant. At the present time the Chicago Great Western provides for the absorption of all the switching charges of connecting lines at Omaha on shipments upon which it receives a revenue of \$15 per car or more. The revenue received by it on the car in question was in excess of \$15.

The Pickard Company's industrial track was completed about April 1, 1914, but the industry was not included in the Missouri Pacific's switching tariff until June 26, 1914, when a switching charge of \$6 per car was established and is still in effect.

There were no other industries in the immediate vicinity of the Pickard Company's plant, but the Missouri Pacific's tariff in effect at the time of movement provided switching charges of from \$3 to \$5 per car from its connections with the tracks of the Union Stock Yards Company to numerous industries in Omaha, for shorter distances than to the Pickard Company's plant. There was no evidence as to the absorption of switching charges by the Chicago Great Western except the showing as to its present practice. The Missouri Pacific admits that the charges collected for its services were unreasonable to the extent that they exceeded \$6, and is willing to make reparation.

We find the charges assailed were unreasonable to the extent that the switching charge assessed by the Missouri Pacific exceeded \$6. The refusal of the Chicago Great Western to absorb more than \$7 of the switching charges assessed is not shown to have been unreasonable or unduly prejudicial. We further find that complainant made the shipment as described and paid and bore charges thereon herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges collected and the charges herein found reasonable; and that it is entitled to reparation from the Missouri Pacific Railway Company and B. F. Bush, receiver, in the sum of \$14.52, with interest. Defendants may waive collection of the above-mentioned undercharge. As the \$6 charge for switching to the Pickard Company's industrial track has been in effect for more than two years, no order for the future is necessary. An appropriate order will be entered.

No. 8958.

NYE SCHNEIDER FOWLER COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted September 26, 1916. Decided June 2, 1917.

Joint class rate on five carloads of corn from Lawton and Ricketts, Iowa, to Kansas City, Mo., found to have been unreasonable to the extent that it exceeded the aggregates of the intermediate rates to and from Council Bluffs, Iowa. Reparation awarded.

E. C. Roberts for complainant.

Lyle Hubbard for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the grain business at Fremont, Nebr. By complaint, filed June 15, 1916, it alleges that a joint class rate of 19.5 cents per 100 pounds charged by defendants for the transportation of five carloads of corn from Lawton and Ricketts, Iowa, to Kansas City, Mo., during the period from February 12, 1914, to February 18, 1914, inclusive, was unreasonable and in violation of the fourth section in that it exceeded the aggregate of the intermediate commodity rates contemporaneously in effect over the route of movement. Reparation is asked. The claim was presented to the Commission informally January 28, 1916. Rates are stated in cents per 100 pounds.

Four carloads, aggregating 351,620 pounds, originated at Lawton; one carload, weighing 86,070 pounds, at Ricketts. They moved over the Chicago & North Western Railway to Council Bluffs, Iowa, where they were reconsigned, under proper tariff authority, to Kansas City, to which point they moved over the Chicago, Burlington & Quincy Railroad. Charges were collected in the sum of \$853.51, based on a joint class rate of 19.5 cents, legally applicable. There were contemporaneously in effect over the route of movement lower combination commodity rates based on Council Bluffs of 12.4 cents from Lawton, composed of a rate of 6.9 cents to Council Bluffs and a proportional rate of 5.5 cents beyond, and of 11.7 cents from Ricketts, composed of a rate of 6.2 cents to Council Bluffs and the 5.5-cent rate beyond. Complainant contends that the rate charged was unreasonable to the extent that it exceeded these combinations.

The shipments under consideration were involved in *Board of Trade of Kansas City v. C., M. & St. P. Ry. Co.*, 34 I. C. C., 208. In that case we found that the joint class rates maintained on coarse grain, in carloads, from points in Iowa, including the points of origin of these shipments, to Kansas City were unreasonable and, in those instances not covered by fourth section applications, also unlawful to the extent that they exceeded the aggregate of the intermediate rates contemporaneously in effect over the respective routes of movement. At the time of the decision in that case, however, the carriers had canceled the joint class rates, leaving applicable the intermediate commodity rates which are still in effect. The same question was presented in *McCaull-Dinsmore Co. v. S. D. C. Ry. Co.*, 41 I. C. C., 663.

Following our decision in the cases cited, we find that the rate of 19.5 cents per 100 pounds charged on the shipments involved was unreasonable to the extent that it exceeded rates of 12.4 cents per 100 pounds from Lawton and 11.7 cents per 100 pounds from Ricketts; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$316.80, with interest.

An order awarding reparation will be entered, but as the rates herein found reasonable have been in effect for more than two years, no order for the future is necessary.

45 I. C. C.

No. 8926.

C. R. HURD BROKERAGE COMPANY

v.

WICHITA VALLEY RAILROAD COMPANY ET AL.

Submitted October 16, 1916. Decided June 2, 1917.

Carload of pecans from Albany, Tex., to Denver, Colo., found to have been misrouted.
Reparation awarded.

F. W. Maxwell and *C. R. Hurd* for complainant.

E. E. Whitted and *A. S. Brook* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the brokerage business at Denver, Colo. By complaint, filed May 19, 1916, it alleges that the charges collected by defendants for the transportation of a carload of pecans shipped January 31, 1913, from Albany, Tex., to Denver, were unreasonable and unduly prejudicial to the extent that they exceeded the charges that would have accrued at a rate of 84 cents per 100 pounds. It is also alleged that the shipment was misrouted. Reparation is asked. The claim was presented to the Commission informally November 6, 1913. Rates are stated in amounts per 100 pounds.

The shipment, weighing 29,916 pounds, was delivered to the Texas Central Railroad, now a part of the Missouri, Kansas & Texas Railway of Texas, hereinafter called Missouri, Kansas & Texas, consigned to complainant at Denver, and was routed by the shipper "T. C., Cisco, M. K. & T., Fort Worth, c/o Ft. W. & Denver." No rate was inserted in the bill of lading. The shipment moved over the Texas Central Railroad to Waco, Tex., Missouri, Kansas & Texas to Fort Worth, Tex.; Fort Worth & Denver City and Colorado & Southern railways to destination. No joint rate was in effect over the route of movement. Charges were collected in the sum of \$367.87. A combination rate of \$1.23, minimum 24,000 pounds, composed of a rate of 39 cents from Albany to Waco and a rate of 84 cents from Waco to Denver, was legally applicable over the route of movement. The correct charges were \$367.96, so that the shipment was undercharged 9 cents. Contemporaneously a joint fourth-class rate of 84 cents, minimum 24,000 pounds, governed by the western classifi-

fication. applied on pecans in carloads from Albany to Denver by way of the Texas Central to Stamford, Tex., the Wichita Valley Railroad to Wichita Falls, Tex., and the Fort Worth & Denver City and the Colorado & Southern beyond. Effective December 1, 1916, a fourth-class rate of 84 cents was established from Albany to Denver over the route of movement. This rate, which is still in effect, applies on pecans in carloads.

When the bill of lading covering the shipment in question was presented to the agent of the Texas Central at Albany, the agent advised the shipper that, under the routing specified therein, the shipment would not move over the cheapest available route. Whereupon the shipper directed the agent to ignore the routing specified in the bill of lading and to forward the shipment over the cheapest available route. The routing shown in the bill of lading, as tendered, was impossible of execution, as the Texas Central did not connect with the Missouri, Kansas & Texas at Cisco. The Missouri, Kansas & Texas admitted on the informal docket that the shipment was misrouted by the initial carrier.

We find that the Texas Central Railroad Company misrouted the shipment; that complainant paid and bore the charges thereon; that it has been damaged by the misrouting to the extent of the difference between the charges paid and those that would have accrued had the shipment been forwarded over the route by which the rate of 84 cents per 100 pounds applied; and that it is entitled to reparation from the Missouri, Kansas & Texas Railway Company of Texas and its receiver in the sum of \$116.58, with interest. The collection of the undercharge described may be waived.

An appropriate order will be entered.

45 I. C. C.

No. 8913.
SWIFT & COMPANY
v.
BOSTON & MAINE RAILROAD ET AL.

Submitted September 14, 1916. . Decided June 2, 1917.

Rate on fresh meat in carloads from Boston, Mass., to Bangor, Me., found to have been unreasonable. Reparation awarded.

R. D. Rynder for complainant.

G. H. Eaton for Boston & Maine Railroad.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the meat-packing business with its principal office at Chicago, Ill. By complaint, filed May 29, 1916, it alleges that the first-class rate of 35 cents per 100 pounds charged by defendants for the transportation of six carloads of fresh meat from Boston, Mass., to Bangor, Me., in May, 1912, and May, June, and July, 1914, was unreasonable to the extent that it exceeded 25 cents per 100 pounds, minimum 20,000 pounds. Reparation is asked and the establishment of reasonable rates for the future. The claims were presented to the Commission within the statutory period. Rates are stated in cents per 100 pounds.

The shipments, six in number, consisted of domestic and imported fresh meat and moved in refrigerator cars over the Boston & Maine Railroad to Portland, Me., and thence over the Maine Central Railroad to Bangor, a distance of 245 miles. Two of the import shipments were switched to the Boston & Maine's tracks by the Boston & Albany Railroad, the charges for which service are not challenged. Freight charges were ultimately collected in the sum of \$434.92. One of the shipments weighed 25,234 pounds; the remainder 20,000 pounds each, or less. The official classification, which governs, provided a rating on fresh meat in less than carloads, first class. It also provided for the application of the less-than-carload rating to carload shipments and, further, that on shipments of fresh meat transported in refrigerator cars a minimum weight of 20,000 pounds per car would apply. The correct charges on the shipments, based on the first-class rate of 35 cents, legally applicable, were \$438.32, so that the shipments were undercharged \$3.40. Effective July 20, 1914, defendants established a carload rate of 25 cents,

minimum 20,000 pounds, equal to the third-class rate contemporaneously in effect, and this rate is still in effect. In official classification territory fresh meat in carloads is and long has been subject to the rates and ratings of the individual carriers, and they usually make rates thereon on basis of the third-class rates, or lower. Complainant contends and defendants admit that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued on basis of the 25-cent rate. The average earnings for 245 miles at the rate of 35 cents were 28.6 mills per ton-mile, and based on the 20,000 minimum 28.6 cents per car-mile; the 25-cent rate would have yielded 20.4 mills per ton-mile, and based on the same minimum 20.4 cents per car-mile.

Following *Swift & Co. v. L. V. R. R. Co.*, 42 I. C. C., 47, and upon the facts of record in this case, we find that the rate charged on the shipments in question was unreasonable to the extent that it exceeded the rate of 25 cents per 100 pounds subsequently established; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$121.83, with interest. Collection of the undercharge described may be waived.

An order awarding reparation will be entered, but as the 25-cent rate has been in effect for more than two years, no order for the future is necessary.

No. 8563.

MEMPHIS FREIGHT BUREAU, FOR WEIS & LESH MANUFACTURING COMPANY,

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted April 12, 1916. Decided June 6, 1917.

Reparation awarded in connection with two carloads of club-turned spokes from Delhi, La., to Memphis, Tenn., and a reasonable rate prescribed for the future.

James S. Davant for complainant.

J. D. Youman for Alabama & Vicksburg Railway Company and Vicksburg, Shreveport & Pacific Railway Company.

J. L. Sheppard for Yazoo & Mississippi Valley Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association of shippers and receivers of freight at Memphis, Tenn. By complaint filed December 29, 1915, on behalf of Weis & Lesh Manufacturing Company, hereinafter called complainant, a corporation engaged in the manufacture of spokes at Delhi, La., and Memphis, complainant alleges that the rate of 29 cents per 100 pounds charged on two carloads of club-turned hickory spokes shipped October 5, 1912, from Delhi to Memphis was unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked and the establishment of a reasonable rate for the future. The claim was presented to the Commission informally August 31, 1914. Rates are stated in cents per 100 pounds.

Delhi is a local point on the Vicksburg, Shreveport & Pacific Railway, hereinafter called the defendant. The shipments, which were unrouted by complainant, aggregated 97,000 pounds and moved over defendant's line to Vicksburg, Miss.; Alabama & Vicksburg Railway to Meridian, Miss.; Mobile & Ohio Railroad, through Corinth, Miss., to Cairo, Ill., and back to Corinth; thence Southern Railway to destination, 812 miles. As Corinth is intermediate to Cairo under rule 5 (b) of Tariff Circular 18-A, the Cairo combination would have applied if the Mobile & Ohio had delivered the shipments to the Southern Railway at Corinth in the first instance without hauling them to Cairo and back. The movement to and from Cairo involved an out of line haul of 346 miles. No joint rate was applicable and charges were collected in the sum of \$281.30 at a combination rate

of 29 cents, 16 cents to Cairo and 13 cents beyond. This was the lowest rate in effect over any route. The direct route was over the defendant's line to Vicksburg and the Yazoo & Mississippi Valley Railroad beyond, 259 miles. At the time of movement no rate applied on spokes over this route, but a joint rate of 12 cents was applicable on hickory lumber, which rate was increased to 14 cents effective February 23, 1915. On April 26, 1913, a joint rate of 15 cents was established over the direct route on club-turned spokes. These rates are still in effect. The Vicksburg, Shreveport & Pacific admitted that the rate charged on these shipments was unreasonable to the extent that it exceeded the present rate of 15 cents over the direct route.

No complaint is made of the rate applicable over the route of movement, but complainant asks reparation upon the basis of the rate applicable on hickory lumber over the direct route at the time of movement and the establishment of a rate over that route upon the same basis for the future.

Following *Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co.*, 27 I. C. C., 370, and other cases, in which we found that club-turned spokes were entitled to the lumber rates, and upon the record herein, we find that the rate on club-turned spokes from and to the points in question by way of the Vicksburg, Shreveport & Pacific Railway and the Yazoo & Mississippi Valley Railroad is, and for the future will be, unreasonable to the extent that it exceeded and may exceed the rate contemporaneously in effect from and to the same points on lumber manufactured from the same kind of wood. This finding with respect to the future is subject to modification if a different conclusion shall be reached in our general investigation.

We further find that the reasonable route for complainant's shipments would have been the route by way of the Vicksburg, Shreveport & Pacific Railway to Vicksburg and the Yazoo & Mississippi Valley Railroad beyond; that a rate of 12 cents per 100 pounds would have been reasonable and should have been in effect by way of that route over which this rate was contemporaneously applicable on hickory lumber in carloads, and that the responsibility for the failure to have such a rate in effect on club-turned spokes over the route named at the time of movement rests upon the defendant; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that by reason of the absence of a reasonable joint rate over the direct route it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate which we find would have been reasonable over the direct route; and that it is entitled to reparation from the Vicksburg, Shreveport & Pacific Railway Company in the sum of \$164.90, with interest.

An appropriate order will be entered.

No. 9065.

VALLEY CREEK COTTON MILLS COMPANY

v.

WESTERN RAILWAY OF ALABAMA ET AL.

FOURTH SECTION APPLICATIONS Nos. 1021 AND 1024.

Submitted November 24, 1916. Decided June 2, 1917.

1. Rate on asphaltum-coated cotton fabrics from Selma, Ala., to East Point, Ga., found to have been unreasonable. Reparation awarded.
2. Authority to continue rates on asphaltum-coated cotton fabrics from Selma to East Point lower than the rates contemporaneously applicable on like traffic from or to intermediate points denied.

L. W. Perkins and *L. F. Deininger* for complainant.

R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cotton goods, with its principal office at Cincinnati, Ohio. By complaint, filed July 19, 1916, it alleges that the first-class rate of 64 cents per 100 pounds charged by defendants on two less-than-carload shipments of asphaltum-coated cotton fabrics, from Selma, Ala., to East Point, Ga., in September, 1914, was unreasonable and unduly prejudicial to the extent that it exceeded the third-class rate of 48 cents per 100 pounds. Reparation is asked. Those portions of Fourth Section Applications No. 1021 of the Western Railway of Alabama and No. 1024 of the Atlanta & West Point Railroad Company, wherein authority is sought to continue rates on asphaltum-coated cotton fabrics from Selma to East Point lower than the rates contemporaneously applicable on like traffic from or to intermediate points, were heard with the complaint. Rates are stated in cents per 100 pounds.

The shipments aggregated 3,810 pounds and moved over defendants' lines. Charges were collected in the sum of \$24.38 at the legally applicable first-class rate of 64 cents, governed by the southern classification. On August 20, 1915, the southern classification was amended, and has since rated asphaltum-coated cloth third class. The third-class rate from Selma to East Point was and is 48 cents.

In *Goodin, Reid & Co. v. C., N. O. & T. P. Ry. Co.*, 41 I. C. C., 679, decided November 9, 1916, we found that the first-class rate charged on a shipment of asphaltum-coated cotton fabric from Selma to Cincinnati, Ohio, in March, 1915, was unreasonable to the extent that it exceeded the third-class rate contemporaneously maintained from and to the same points. At the hearing in the case under consideration the parties agreed that the decision in the case cited should control as to this case.

With respect to the fourth section applications heard with the complaint, defendants stated that there was at present no movement of the commodity in question from Selma to East Point; that there would be a general revision of rates northbound as well as southbound; and that they would not undertake to offer evidence in support of the fourth section applications. The applications will be denied to the extent that they are here involved.

We find that the rate charged on the shipments in issue was unreasonable to the extent that it exceeded the third-class rate of 48 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$6.09, with interest. As the rate found reasonable has applied since August 20, 1915, no order for the future is necessary.

Appropriate orders will be entered.

45 I. C. C.

No. 8940.

NATIONAL SLAG COMPANY

v.

LEHIGH VALLEY RAILROAD COMPANY ET AL.

Submitted November 2, 1916. Decided June 6, 1917.

Rate on slag in carloads from South Bethlehem, Pa., to Philadelphia, Pa., over an interstate route, not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

Robert D. Jenks and A. H. Herbst for complainant.

Frederick L. Ballard and Henry Wolf Bikelé for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, John M. Buckland, is engaged in the crushing of blast furnace slag, under the firm name of National Slag Company, with his principal office at Philadelphia, Pa., and a slag crusher at South Bethlehem, Pa. By complaint, filed May 27, 1916, he alleges that defendants' rate of 73 cents per net ton for the interstate transportation of slag, in carloads, from South Bethlehem to Philadelphia is unreasonable and unduly prejudicial to the extent that it exceeds 58 cents per net ton. The establishment of a reasonable and non-prejudicial rate for the future is asked. Rates are stated in cents per net ton, unless otherwise noted.

Slag is a waste product resulting from the reduction of iron ore. When crushed the great bulk of it is used in road construction for the same purpose as stone and gravel; also in cement and concrete work. The average value of complainant's slag at the crusher is about 48 cents per net ton. Complainant has contracted for a period of years to remove large quantities of this commodity from the Bethlehem steel plant at South Bethlehem. The movement averages about 500 cars a month, and is regular throughout the year. Slag, which moves in open cars, loads to the capacity of the cars, and claims for loss and damage in transit are unknown.

The joint rate of 73 cents applies over the Lehigh Valley Railroad from South Bethlehem to Phillipsburg Junction, N. J., 12 miles, and thence over the Pennsylvania Railroad to Philadelphia, 94 miles, and includes over 60 general public deliveries and numerous private deliveries in Philadelphia, which are served exclusively by the Penn-

sylvania. Complainant's loading tracks at South Bethlehem are served by the Lehigh Valley and by the Philadelphia & Reading Railway, hereinafter called the Reading. A rate of 58 cents from South Bethlehem to Philadelphia is applicable over the Reading's intrastate route of 62 miles to numerous general and private deliveries in Philadelphia which are served exclusively by the Reading. Complainant's principal competitors are located at Pottstown, Birdsboro, Reading, Temple, and Leesport, Pa., stations located along the Schuylkill River at an average distance of 65 miles from Philadelphia by way of the Pennsylvania's intrastate route. The Reading parallels the Pennsylvania along the river and serves the same points. At Birdsboro the Pennsylvania absorbs the Reading's switching charges. A local rate of 58 cents applies from these stations to Philadelphia over each line. Complainant stated that the 73-cent rate was prohibitive and that no shipments except a very small amount of roofing slag had moved thereunder. He desires to have the Pennsylvania deliveries in Philadelphia opened to him at the rate paid by his competitors.

On April 29, 1915, the defendants, at complainant's request, reduced the then rate of \$1.05 on slag from South Bethlehem to Philadelphia to the present rate of 73 cents. The per ton-mile yield is 6.89 mills for the two-line haul of 106 miles. The Reading's rate of 58 cents between the same points yields 9.35 mills per ton-mile for a one-line haul of 62 miles.

Complainant cites rates of 70.5 cents on pig iron, a much more valuable commodity than slag, from South Bethlehem to Philadelphia by way of the Lehigh Valley-Pennsylvania route; of 60.5 cents over the Reading. Defendants reply that there is no competition between pig iron and slag; and that the rates on pig iron are highly competitive, being a part of the general iron and steel rate adjustment, and are not fairly comparable with the rates on slag. Complainant also cited local rates of the Pennsylvania on road slag, from Reading, Temple, Devault, Bainbridge, and Steelton, Pa., to numerous points in Maryland and Delaware, which were considerably lower, relatively, than the 73-cent rate attacked. By tariffs, effective November 1, 1916, these road slag rates were canceled and readjusted. The new tariff names rates from Reading and Temple which compare favorably with the rates assailed. The rates on road slag from Devault, Bainbridge, and Steelton were eliminated because no shipments move from those points.

Defendants justify the 15-cent difference between the rate assailed and the rates applicable for one-line hauls from South Bethlehem and from the five competitive points above mentioned to Philadelphia, on the grounds of differences in distance, and additional serv-

ices incident to the two-line haul. They also compare, with favorable results, the rate attacked with numerous rates on slag, sand, and crushed stone in the same general territory for distances approximating that here involved.

We find that the rate assailed is not shown to be unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.

No. 8849.

WESTERN GRAIN & SUGAR PRODUCTS COMPANY ET AL.

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted July 14, 1916. Decided June 6, 1917.

Charges assessed at the published rates based on estimated weights on 55 carloads of alcohol in tank cars from Agnew, Cal., to Philadelphia, Pa., Parlin, N. J., Norfolk, Va., Chicago, Ill., Minneapolis, Minn., and St. Louis, Mo., found to have been unreasonable to the extent that they exceeded charges based on actual weight at a rate of 85 cents per 100 pounds. Reparation awarded.

W. D. Wall for complainants.

George D. Squires for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Western Grain & Sugar Products Company, a corporation engaged in the manufacture of alcohol at Agnew, Cal., and the Atlantic Drier & Varnish Company, a corporation engaged in the manufacture of varnish, with its principal place of business at Philadelphia, Pa. By complaint, filed May 3, 1916, they allege that the charges assessed by defendants for the transportation of 55 carloads of alcohol in tank cars from Agnew to Philadelphia, Parlin, N. J., Norfolk, Va., Chicago, Ill., Minneapolis, Minn., and St. Louis, Mo., during the period from November 2, 1912, to December 27, 1913, inclusive, at the legal rates and estimated weight of 6.83 pounds per gallon applied to the marked gallonage capacity of the cars, were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 85 cents per 100 pounds applied on the basis of the actual weight of the shipments. Reparation is asked. The claims were presented to the Commission informally within the statutory period. Rates are stated in amounts per 100 pounds.

The details concerning the shipments are shown in the following table:

Dates between which shipments moved (inclusive).	Destination.	Cars.	Route.	Actual weight.	Charges assessed.			Charges collected.
					Weight.	Rate.	Amount.	
Nov. 9, 1912-Dec. 22, 1913.....	Philadelphia, Pa.....	28	S. P.; U. P.; C., M. & St. P.; E., J. & E.; B. & O.	<i>Pounds.</i> 1,294,099		\$1.90	\$24,587.83	\$19,007.68
Dec. 30, 1912-June 17, 1913.....	do.....	7	S. P.; U. P.; C. & N. W.; E., J. & E.; B. & O.	313,150	326,214	1.90	6,198.05	2,678.59
July 23, 1913-Nov. 7, 1913.....	do.....	3	S. P.; U. P.; I. C.; E., J. & E.; B. & O.	129,300	135,234	1.90	2,569.44	2,004.35
Dec. 24, 1913-Dec. 27, 1913.....	Parlin, N. J.....	3	S. P.; U. P.; C., M. & St. P.; E., J. & E.; Pa.; Rar. R.	129,915	135,234	1.90	2,569.44	2,468.40
Nov. 6, 1913-Dec. 18, 1913.....	Norfolk, Va.....	2	S. P.; U. P.; C., M. & St. P.; E., J. & E.; Pa.; N. Y. P. & N.	87,000	90,156	1.90	1,712.96	1,653.00
Nov. 2, 1912-Dec. 10, 1912.....	Chicago, Ill.....	6	S. P.; U. P.; C., M. & St. P.	269,820	270,468	1.75	4,733.22	2,296.68
Jan. 9, 1913-Apr. 11, 1913.....	do.....	3	S. P.; U. P.; C. & N. W.	135,160	135,234	1.75	2,366.61	1,148.87
Mar. 6, 1913.....	St. Louis, Mo.....	1	S. P.; U. P.; Wabash.	44,720	45,078	1.68	757.31	380.12
Dec. 20, 1912-Jan. 4, 1913.....	Minneapolis, Minn.....	2	S. P.; U. P.; C., M. & St. P.	88,170	90,156	1.60	1,442.50	749.45

For a number of years defendants published a rate of 95 cents on alcohol, in tank cars, minimum capacity of tanks, from Agnew to the destinations named. In June, 1912, the initial carrier was advised that the Atlantic Drier & Varnish Company had established a central denaturing bonded warehouse at Philadelphia, and that negotiations had been conducted by the Western Grain & Sugar Products Company to supply it with alcohol, but that shipments from Agnew could not profitably be made under the 95-cent rate. Prior to this time the movement in tank cars was apparently inconsequential. The transcontinental tariff carrying the 95-cent rate was then being checked for reissue, and upon a recommendation of the representative of the initial carrier, who was without knowledge of the foregoing facts and under the assumption that there would be no future movement, the item covering shipments of alcohol in tank cars was canceled, effective August 19, 1912. In consequence of this action, shipments from Agnew in tank cars were thereafter subject to the western classification fifth-class rating and an estimated weight, prescribed by the classification, of 6.83 pounds per gallon based on the full gallonage capacity of the tank, unless the weight-carrying capacity of the car trucks was less, in which case the actual weight, subject to the weight-carrying capacity of the car trucks as minimum, would govern.

The rate on alcohol in bulk, in barrels or drums, was formerly 85 cents from Pacific coast terminals and intermediate points to eastern common points. Effective August 19, 1912, it was increased to \$1.10 and on October 21, 1912, the 85-cent rate was reestablished.

Charges were assessed on the shipments in issue at the rate of 85 cents applied on basis of actual weight. Subsequently defendants discovered the inapplicability of the 85-cent rate and presented supplemental freight bills on basis of the published fifth-class rates and the prescribed estimated weight per gallon applied to the full gallonage capacity of the tanks. In some instances the supplemental freight bills were paid; in others complainants deferred payment pending the determination of this case.

The United States internal-revenue regulations require an allowance of 5 per cent for expansion of alcohol in tank cars, and these shipments were so gauged by the revenue officer under whose supervision they were loaded. The weight basis prescribed by the classification was therefore in conflict with the government regulations. Effective January 1, 1914, defendants reestablished the 85-cent rate on this commodity in tank cars, minimum full gallonage capacity of tank. On October 11, 1915, the tariff was further amended to provide for the application of actual weight per gallon at full gallonage capacity of the tank, except that on shipments loaded in tank cars the domes of which are not of sufficient capacity to cover 5

per cent outage an allowance will be made from the shell capacity of tank to cover difference between the dome capacity and the 5 per cent outage.

Complainants contend that the charges applicable were unreasonable to the extent that they exceeded those that would have accrued at the 85-cent rate applied on the basis of the actual weight of the shipments, and in support of their contention cite a commodity rate of 75 cents contemporaneously applicable on wine in tank cars from Agnew to Philadelphia. Defendants concede that the charges applicable were unreasonable and express willingness to make reparation on the basis sought.

We find that the charges assailed were unreasonable to the extent that they exceeded those that would have accrued at the rate of 85 cents per 100 pounds based on actual weight per gallon at full gallonage capacity of the tanks, less an allowance of 5 per cent on such shipments which were loaded in tank cars the domes of which were not of sufficient capacity to cover 5 per cent outage. We further find that the shipments involved were made as described; that the complainants paid and bore the charges thereon at the rates and weights herein found to have been unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges which would have accrued on basis of the rate and weight herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation. The undercharges found outstanding may be waived. As the rate found reasonable has been in effect for more than a year, no order for the future is necessary.

No. 8852.
JOHN VALLANCE

v.

NORTHERN PACIFIC RAILWAY COMPANY.

Submitted October 16, 1916. Decided June 5, 1917.

Charges collected for the use of refrigerator cars in the transportation of four carloads of potatoes from Hamilton, Mont., to Seattle, Wash., found to have been unlawful. Reparation awarded.

E. C. Kurtz for complainant.

W. H. Merriman for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Hamilton, Mont. By complaint, filed March 11, 1916, he alleges that the charge of \$5 per car assessed by defendant for the use of refrigerator cars in the transportation of four carloads of potatoes from Hamilton to Seattle, Wash., during the period from February 6, 1915, to March 13, 1915, inclusive, was unreasonable. Reparation is asked.

The shipments moved over defendant's line in refrigerator cars, and a charge of \$5 per car was assessed in addition to the transportation rates. Defendant's tariff, naming the transportation rate applicable to the shipments, did not specifically refer to any other tariff except one containing prepayment requirements at stations, but did provide that:

Freight transported under this tariff, in addition to the rates named herein will be subject to the rules and regulations of the individual lines parties hereto, lawfully on file with the Interstate Commerce Commission in which are stated charges and rules relating to car service, switching, reconsigning, storage.

Transcontinental freight bureau tariff I. C. C. No. 1002, contemporaneously in effect and concurred in by defendant, named the following rate for refrigeration and heated car service in connection with the transportation of various perishables, including fresh vegetables, from and to the points involved:

When a refrigerator or other insulated car is furnished upon shippers' orders, a charge of \$5 per car per trip will be made for the use of car.

This provision was canceled November 8, 1915.

The provisions cited were relied upon by defendant as authority for making the charges assailed.

The above-quoted provision of defendant's tariff refers only to the rules and regulations of individual lines relating to car service, switching, reconsignments, and storage. In our opinion, the terms used may not be properly interpreted as authorizing the application to these shipments of the provision referred to in the transcontinental freight bureau tariff. It follows that the charges assailed were collected without tariff authority.

We find that complainant made the shipments as described and paid and bore the charges for the use of the cars in which said shipments were transported herein found to have been unlawful; that he has been damaged in the amount of said charges and is entitled to reparation in the sum of \$20, with interest.

An appropriate order will be entered.

No. 8945.¹

M. G. RANKIN & COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted January 22, 1917. Decided June 6, 1917.

1. Rates on brewers' dried grain in carloads from Chicago, Ill., to Lake Geneva, Kewaunee, Elkhorn, and Springfield, Wis., not shown to have been unreasonable.
2. Allegation that charges on the shipments to Springfield and Kewaunee were assessed on an excessive weight not sustained. Complaints dismissed.

George A. Schroeder for complainants.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

A. F. Cleveland for Chicago & North Western Railway Company and Kewaunee, Green Bay & Western Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases are related and will be disposed of in one report. Complainants are M. G. Rankin and C. B. Pierce, copartners, engaged in the grain and feed business at Milwaukee, Wis., under the firm name of M. G. Rankin & Company. By complaints, filed June

¹ The proceeding also embraces complaint in No. 9174, Same v. Chicago & North Western Railway Company et al.

10, 1916, as amended, and September 14, 1916, they allege that the commodity rates charged by defendants on four carloads of brewers' dried grain shipped from Chicago, Ill., to Lake Geneva, Kewaunee, Elkhorn, and Springfield, Wis., during the period from August 2, 1915, to April 6, 1916, inclusive, were unreasonable to the extent that they exceeded the class E rates contemporaneously in effect; and that the shipments to Springfield and Kewaunee were overcharged in weight. Reparation is asked and the establishment of reasonable rates for the future. Rates are stated in cents per 100 pounds.

The shipments moved over defendants' lines and charges aggregating \$58 were collected on those to Lake Geneva and Elkhorn at the legally applicable commodity rates of 7 cents and $7\frac{1}{2}$ cents, respectively, based upon carload minima of 40,000 pounds. Charges aggregating \$81.21 were collected on the shipments to Kewaunee and Springfield at the legally applicable commodity rates of $12\frac{1}{2}$ cents and $7\frac{1}{2}$ cents, respectively, based upon weights of 40,300 pounds and 41,100 pounds. The distances from Chicago to the various destinations and the earnings per ton-mile under the rates charged are as follows: To Lake Geneva, 70 miles, 2 cents; to Kewaunee, 237 miles, 1.05 cents; to Elkhorn, 95 miles, 1.58 cents; and to Springfield, 88 miles, 1.7 cents.

Complainants rely upon the facts that at the time of movement brewers' or distillers' spent grain, which term, it is stated, was used interchangeably with that of brewers' dried grain to describe the same commodity, was rated class E, carload minimum 36,000 pounds, in the western classification; and that the class E rates in effect from Chicago were 5 cents to Lake Geneva, 8 cents to Kewaunee, and 4.5 cents to Elkhorn and Springfield. They also observed that on intra-state shipments in Wisconsin class or commodity rates, whichever are lower, apply. The Chicago & North Western Railway, hereinafter called the North Western, stated that this was the result of a requirement of the Railroad Commission of Wisconsin. No discrimination was alleged.

Complainants contend that the shipments to Springfield and Kewaunee actually weighed 40,000 pounds each. These shipments were not weighed by complainants, their statement as to weights being based solely on the fact that each of these shipments was invoiced to them as weighing 40,000 pounds; that each contained 320 bags of brewers' dried grain; and that experience had demonstrated that these bags uniformly weighed 125 pounds each. The shipments to Springfield and Kewaunee were weighed on railroad track scales. The net weight of the former was 41,900 pounds, and the assessing of charges on 41,100 pounds was due to clerical error. There is, therefore, an outstanding undercharge on this shipment. The evidence

offered by complainants is not sufficient to refute the presumption of accuracy which attaches to the track-scale weights.

The defendant in No. 8945 did not attempt to justify the charging of commodity rates higher than the contemporaneously applicable class E rates.

In No. 9174 the North Western testified that at the time distillers' and brewers' spent grain was first rated class E it was shipped wet and loaded very heavily and that later, when it began to move dry, resulting in much lighter loads, the classification rating was not changed. It contends that the class E rating was unreasonably low on brewers' dried grain and stated that that rating generally applies to very low grade, heavy loading commodities, such as earth or soil, gravel and slag. It asserts that class B would have been a reasonable rating on brewers' dried grain, and cited numerous analogous articles which were rated class B, such as bran or shorts, feed, n. o. i. b. n., grain screenings, oat hulls or dust, and dried starch refuse. On April 20, 1917, the rating on brewers' or distillers' spent grain, dry, was increased to class B. The class B rates from and to the points involved are materially higher than the commodity rates on brewers' dried grain.

The rates charged were the corn rates and applied to numerous commodities, including brewers' dried grain, alfalfa meal, bran, dried beet pulp, live-stock feed, grain screenings and middlings. In January, 1916, the commodity rate on brewers' dried grain from Chicago to Lake Geneva was reduced to 5 cents.

We find that the rates assailed are not shown to have been unreasonable, and an order will be entered dismissing the complaints.

45 I. C. C.

No. 8809.

GLOBE LUMBER COMPANY, LIMITED,

v.

SIBLEY, LAKE BISTENEAU & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted July 15, 1916. Decided June 6, 1917.

Rate on a carload of yellow-pine lumber from Yellow Pine, La., to Hyannis, Mass., not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

W. R. Thurmond for complainant.

L. A. Bonnell for Sibley, Lake Bisteneau & Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Yellow Pine, La. By complaint, filed April 10, 1913, it alleges that defendants' rate of 45 cents per 100 pounds, assessed on a carload of yellow-pine lumber shipped April 16, 1912, from Yellow Pine to Hyannis, Mass., was unreasonable and unduly prejudicial to the extent that it exceeded a rate of 37 cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally February 16, 1914. Rates are stated in cents per 100 pounds.

The shipment, weighing 49,600 pounds, was originally billed to New Haven, Conn., over the Sibley, Lake Bisteneau & Southern Railway to Sibley, La., and Vicksburg, Shreveport & Pacific Railway, Central States Despatch, and New York, New Haven & Hartford Railroad beyond. It moved to Sibley on April 16, 1912, but upon arrival of the car at that point the complainant was advised that because of flood conditions the car could not be handled over the Vicksburg, Shreveport & Pacific. On May 27, 1912, complainant ordered the car forwarded in connection with the Louisiana & Arkansas Railway and movement over this line was begun the day complainant's order was received. The route of the car was as follows: Louisiana & Arkansas, St. Louis & San Francisco, via Thebes; Chicago & Eastern Illinois; Chicago & Erie, and Erie railroads; Central New England Railway and the New York, New Haven & Hartford, 2,300.4 miles. No joint rate was applicable over this route and charges were collected at a combination rate of 45 cents, composed of 16 cents to Thebes and 29 cents beyond.

No evidence was introduced tending to show that the rate complained of was unduly prejudicial. Complainant's case is based upon the fact that a rate of $37\frac{1}{2}$ cents, since increased to 39 cents, applied from Yellow Pine to Hyannis through Sibley in connection with the Vicksburg, Shreveport & Pacific and its connections, Alabama & Vicksburg Railway, Alabama Great Southern Railroad, Cincinnati, New Orleans & Texas Pacific Railway, Baltimore & Ohio Southwestern, Baltimore & Ohio, and Cumberland Valley railroads, Philadelphia & Reading Railway, Central Railroad of New Jersey, Lehigh & Hudson River and Central New England railways, and New York, New Haven & Hartford, 1,993.8 miles. Also that, effective May 14, 1912, after the shipment moved from Yellow Pine and while it was at Sibley, a rate of 37 cents was established over the route of movement. On January 25, 1913, the latter rate was canceled and the combination rate of 45 cents was reestablished and continued in effect until January 15, 1915, when it was increased to 46.4 cents, the present rate.

The initial line states that a rate of 37 or $37\frac{1}{2}$ cents was generally applicable on lumber moving by way of the Vicksburg, Shreveport & Pacific from producing territory in Louisiana to Boston rate points, including Hyannis. The 37-cent rate, which became effective May 14, 1912, was apparently established to meet competition.

We have repeatedly held that the existence of a lower rate over another route and the subsequent reduction of the rate over the route of movement do not of themselves warrant condemnation of the rate charged.

We find that the rate attacked is not shown to have been unreasonable or unduly prejudicial, and an order dismissing the complaint will be entered.

No. 8814.

WILLISTON MILL COMPANY

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted November 2, 1916. Decided June 7, 1917.

Rate on flour in carloads from Williston, N. Dak., to San Francisco, Cal., not shown to have been unreasonable. Complaint dismissed.

O. W. Tong for complainant.

John F. Finerty for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the milling business at Williston, N. Dak. By complaint, filed April 17, 1916, it alleges that the joint rate of 65 cents per 100 pounds charged by defendants for the transportation of 33 carloads of flour and millstuffs from Williston to San Francisco, Cal., during the period from October 1, 1913, to July 1, 1914, inclusive, was unreasonable to the extent that it exceeded 55 cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally October 11, 1915. Rates are stated in cents per 100 pounds.

The shipments, each of which weighed 49,000 pounds, moved over the Great Northern Railway to Seattle, Wash., and thence to destination by way of the North Pacific Steamship Company. Charges were collected at a joint rate of 65 cents, minimum 40,000 pounds, which applied from all points in North Dakota, Aberdeen, S. Dak., and certain points in western Minnesota. Effective January 15, 1915, this rate was reduced to 52½ cents and the minimum increased to 60,000 pounds, which are satisfactory to complainant. Reparation is sought on the basis of an alleged combination rate of 55 cents contemporaneously in effect, composed of 5½ cents from Williston to Mondak, Mont., 37 cents from Mondak, to Seattle, and 12½ cents applicable over the boat lines from Seattle to San Francisco. The component from Mondak to Seattle applied only on wheat, and the component from Seattle to San Francisco was not on file with the Commission. Effective December 28, 1914, defendants made the rate from Mondak to Seattle applicable also on flour, and complainant contends that this component should have applied on flour at the

time the shipments in question moved, thereby serving in a combination rate to measure the reasonableness of the joint rate charged. This comparison fails to reflect unreasonableness in the rate attacked.

Complainant also cited an alleged combination rate of 62½ cents from Williston to San Francisco in effect during the time of movement, composed of 7 cents from Williston to Snowden, Mont.; 43 cents from Snowden to Seattle, and 12½ cents from Seattle to San Francisco. As above stated, the latter component is not on file with this Commission. Complainant compared ton-mile earnings under the 65-cent rate charged with like earnings under flour rates between various points. The earnings under the rate charged are computed on the basis of the distance from Williston to Seattle and the division of that rate accruing to the Great Northern to Seattle, said by complainant to have been 52½ cents under the assumption that the division accruing to the boat line from Seattle was 12½ cents. Under this method of computation complainant shows that a rate of 52½ cents to Seattle, 1,181 miles, yields a ton-mile revenue of 8.88 mills. This is compared, for example, with a 37-cent rate from Mondak to Seattle, 1,158 miles, yielding ton-mile earnings of 6.39 mills, and a rate of 18.5 cents from Williston to Minneapolis, Minn., 587 miles, yielding ton-mile earnings of 6.3 mills. This comparison of ton-mile earnings under an assumed division of a rate is of little value and does not demonstrate the unreasonableness of the joint rate assailed.

Defendants insist that the joint rate charged was not unreasonable, and in support thereof point to a rate of 75 cents on flour from Kansas, Nebraska, and Oklahoma points to San Francisco, approved by us in *Kansas-California Flour Rates*, 32 I. C. C., 602. This rate applies, for example, from Wichita and Topeka, Kans., and Oklahoma City, Okla., to San Francisco by way of the Atchison, Topeka & Santa Fe Railway, 1,909, 2,035, and 1,963 miles, respectively, and from Omaha, Nebr., to San Francisco by way of the Union Pacific Railroad and Southern Pacific lines, 1,793 miles.

We find that the rate charged is not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 8822.

RIVERSIDE PORTLAND CEMENT COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted September 8, 1916. Decided June 6, 1917.

Rate on gypsum in carloads from Rito, N. Mex., to Riverside, Cal., found to have been unreasonable. Reparation awarded.

O. T. Helpling and P. H. Campbell for complainant.

E. W. Camp for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of cement, with its principal office at Los Angeles, Cal. By complaint, filed April 19, 1916, it alleges that the charges collected on 15 carloads of gypsum from Rito, N. Mex., to Riverside, Cal., during March, 1912, were unreasonable to the extent that they exceeded charges based on a rate of \$3 per net ton. The claim was presented to the Commission informally March 4, 1914. Reparation is asked. Rates are stated in amounts per net ton.

The shipments aggregated 1,204,160 pounds and moved over defendant's line. Charges were collected in the sum of \$2,107.28, based on commodity rates of \$2 from Rito to Amboy, Cal., and \$1.50 beyond, and a minimum of 40,000 pounds. All of the shipments weighed in excess of the applicable minimum. A joint rate of \$10.56, which was 80 per cent of the class E rate, was legally applicable. This rate being in excess of the aggregate of intermediate rates charged, authority to waive collection of the outstanding undercharge of \$4,250.68 was granted by our order of July 15, 1914.

Prior to the time of movement a commodity rate of \$3 applied on gypsum, in carloads, from Rito to Riverside. On February 26, 1912, this rate was canceled through error, making applicable the joint through class rate of \$10.56. On April 29, 1912, the \$3 rate was restored.

As the charges based on the combination rate of \$3.50 represent an increase over those based on the rate in effect on this traffic in 1910, the burden of proving their reasonableness rests upon defendant. Defendant introduced practically no evidence in justification of

the increased charges, admitting that they were unreasonable and that they should not have exceeded charges based on a rate of \$3.

Effective March 1, 1914, the rate from Rito to Riverside was increased to \$4. This rate was canceled on September 30, 1916, leaving the through class E rate of \$11.20 applicable. The reasonableness of these increased rates is not before us on this complaint, but it is observed that the present rate is in violation of the fourth section. The commodity rate of \$1.50 from Amboy to Riverside is still in force; the commodity rate of \$2 from Rito to Amboy was canceled October 20, 1913, leaving applicable a class E rate of \$8, making the aggregate of the intermediate rates now in effect \$9.50. This unlawful situation should be immediately rectified.

We find that the increased rate applied to complainant's shipments from Rito to Riverside has not been justified. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found to have been unreasonable; that it has been damaged to the extent that the charges collected exceeded the charges that would have accrued based on the rate of \$3 per net ton; and that it is entitled to reparation, with interest, on all of the shipments delivered subsequently to March 5, 1912. The exact amount of reparation due can not be determined upon the present record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 8839.

BISHOP-BABCOCK-BECKER COMPANY

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

Submitted July 1, 1916. Decided June 7, 1917.

Rate charged on a carload of soda fountain counters and fixtures from Cleveland, Ohio, to Arkansas City, Kans., found to have been legally applicable and not shown to have been unreasonable. Complaint dismissed.

A. L. Bishop for complainant.

Grant Wyrick for Atchison, Topeka & Santa Fe Railway Company.

John M. Sternhagen for New York Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing soda fountains at Cleveland, Ohio. By complaint, filed April 26, 1916, it alleges that defendants' charges on a soda fountain, shipped March 17, 1915, from Cleveland to Arkansas City, Kans., were unreasonable. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipment, consisting of 2,460 pounds of soda fountain counters and fixtures, was inclosed in what complainant described as five wooden boxes with apertures between the boards varying from 1 inch to 2½ inches in width, and billed by it as "5 boxes soda fountain fixtures." Charges were prepaid on the billed weight of 2,556 pounds at a combination first-class rate of \$1.723, composed of 55.3 cents to East Fort Madison, Ill., governed by the official classification, and \$1.17 beyond, governed by the western classification. The rating of one and one-half times first class was legally applicable to soda fountain counters and fixtures, boxed or crated, in less than carloads, from Cleveland to East Fort Madison. As the result of an inspection at destination, the agent of the delivering carrier determined that the shipment was not boxed, but crated, and additional charges were collected representing the difference between the charges prepaid and those applicable at one and one-half times the first-class rate and the actual weight, 2,460 pounds. The through rate, at one and one-half times first class, was \$2.585, 83 cents to

East Fort Madison, and \$1.755 beyond. The charges beyond East Fort Madison on soda fountain counters and fixtures, crated, in less than carloads, were based on the following provisions of the western classification:

Soda fountains and fixtures, in boxes (boxes may have an aperture on each side to indicate the character of the article enclosed)-----1st class.

Unless otherwise provided for in the classification, all freight shipped in crates, bales, bags or bundles will take when shipped in crates the next class higher (greater) than in boxes, and when shipped in bales, bags, or bundles, one class higher (greater) than in crates. * * *

Boxes must be made of iron or steel, not less than 16 gauge U. S. standard, or of wood, except as provided in rule 42, with solid or closely fitted sides, ends, tops, and bottoms, securely fastened.

Complainant contends (1) that the shipment was boxed and therefore entitled to the through first-class rate, and (2) that the rating applied beyond East Fort Madison was unreasonable to the extent that it exceeded the first-class rating applicable to boxed shipments. With respect to the first contention, while complainant states that the shipment was packed in such manner as to be entitled to the first-class rate beyond East Fort Madison, it appears that the covering was such that it could not properly be termed a box under the general rule of the classification.

The second contention is based on the fact that the rating contemporaneously provided in the western classification for various other articles was the same for crated as for boxed shipments, and that, effective May 1, 1915, subsequently to the movement, the western classification provided the first-class rating on soda fountains and fixtures in less than carloads, boxed or crated. The facts presented do not afford a sufficient basis for a finding that the rating on the commodity involved, in crates, was unreasonable. In *Wadell Show Case & Cabinet Co. v. M. C. R. R. Co.*, 22 I. C. C., 106, a case strikingly similar, we refused to condemn an earlier western classification rule which provided higher ratings on freight shipped in crates than when shipped in boxes.

We find that the rate charged was legally applicable, and that it is not shown to have been unreasonable.

An order dismissing the complaint will be entered.

45 I. C. C.

No. 9029.

WICHITA TRAFFIC BUREAU

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
2045, 2659, 3786, 4218, 4219, 4220, 4326, AND 4621.

Submitted March 29, 1917. Decided June 6, 1917.

1. Present rate on brooms in carloads from Wichita, Kans., to Omaha, Nebr., and Council Bluffs, Iowa, not found unreasonable, unjustly discriminatory, or unduly prejudicial.
2. Rate of 91 cents per 100 pounds charged on shipments from Wichita, Kans., to Sioux City, Iowa, found unreasonable to the extent that it exceeded the aggregate of intermediate rates contemporaneously in effect. Reparation awarded.

W. P. Huston for complainant.

R. G. Merrick for Atchison, Topeka & Santa Fe Railway Company.

H. G. Herbel for Missouri Pacific Railway Company.

J. C. La Coste for Chicago, Rock Island & Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association of individuals and corporations located at Wichita, Kans. By complaint, filed June 29, 1916, on behalf of the Southwestern Broom & Warehouse Company, of Wichita, it alleges that defendants' rates on brooms in carloads from Wichita to Omaha, Nebr., and Council Bluffs and Sioux City, Iowa, are unreasonable, unjustly discriminatory, and unduly prejudicial, and that the rate to Sioux City also violated the fourth section in that it exceeded the aggregate of the intermediate rates to and from Omaha. Reparation is asked on four carloads of brooms from Wichita to Sioux City delivered during the period from August 27, 1915, to June 21, 1916, inclusive. Rates are stated in cents per 100 pounds.

The shipments consisted of brooms other than wire and moved over defendants' lines through Omaha. Charges were collected on

three of the shipments at a second-class joint rate of 91 cents, legally applicable, and on the fourth at a rate of 66.85 cents. The latter shipment was undercharged 24.15 cents per 100 pounds.

At the time of movement a commodity rate of 50.5 cents applied from Wichita to Omaha and a third-class rate of 16.3 cents, governed by the Iowa classification, from Omaha to Sioux City, making the aggregate of intermediate rates 66.8 cents. The departures from the provisions of the fourth section were protected by appropriate applications which were heard with the complaint. Subsequent to the filing of the complaint herein the defendants established commodity rates of 56.5 cents from Wichita to Sioux City, except in connection with the Missouri, Kansas & Texas Railway and the Rock Island. The route by way of the Missouri, Kansas & Texas is circuitous. The Rock Island established a rate of 50.5 cents by way of its line and its connections. The Rock Island avers that this rate was the result of a typographical error, and that it intended to establish the 56.5-cent rate which it later published in schedules the operation of which we suspended. These were canceled on short notice under Special Permission No. 42210. The present rates conform to the requirements of the fourth section. The correction of the fourth section departures renders any finding with respect thereto unnecessary.

Defendants have also established rates of 47.5 cents on brooms other than wire, in carloads, from Wichita to Omaha applicable over substantially all routes, except in connection with the Missouri, Kansas & Texas Railway. The same rates also apply from Wichita to Council Bluffs, but only by way of the Rock Island. The present rates to Omaha and Council Bluffs are satisfactory to complainant.

Complainant contends that a reasonable rate on brooms other than wire from Wichita to Sioux City was, is, and for the future would be 50.5 cents. The 56.5-cent rate for the average distance to Sioux City, 620 miles, as given by complainant, yields 18.2 mills per ton-mile; the 47.5-cent rate for the average distance to Omaha, 550 miles, as given by complainant, 17.3 mills per ton-mile. Complainant urges that the ton-mile earnings for the greater distance to Sioux City should be less than to Omaha irrespective of the additional carriers that participate in the transportation to Sioux City. The rate to Sioux City for the short-line distance of 457 miles yields 24.7 mills per ton-mile; the rate to Omaha for the short-line distance of 376 miles, 25.3 mills per ton-mile. The distance from Omaha to Sioux City is approximately 100 miles, and the local rate on brooms is 16.3 cents. The minimum applicable in connection with the rate to Sioux City is only 14,000 pounds, graduated according to size of car, the traffic loads very light, and the car-mile earnings are therefore rela-

tively low. The value of an average carload of brooms was stated to be from \$2,000 to \$3,000.

Witnesses for the Atchison, Topeka & Santa Fe Railway and the Rock Island stated that they would not attempt to justify the 91-cent rate charged to Sioux City, or any rate in excess of the aggregate of the intermediate rates, and several of the defendants expressed willingness to make reparation on that basis on the shipments which moved by way of their lines.

No probative evidence of unjust discrimination or undue prejudice was adduced.

We find that the present rates from Wichita to Omaha, Council Bluffs, and Sioux City are not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial, but that the rate charged on the shipments above described was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Omaha; that the Southwestern Broom & Warehouse Company made the said shipments and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record. Complainant should prepare a statement showing the details of the shipments, in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. The collection of the outstanding undercharges may be waived. As the present rate from Wichita to Sioux City is lower than the rate upon the basis of which reparation is awarded, no order for the future is necessary.

No. 8837.

McKAY & MORGAN

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
ET AL.

Submitted September 15, 1916. Decided June 6, 1917.

Charges on two mixed carloads of canned hominy and canned sauerkraut from Jeffersonville, Ind., to Nashville, Tenn., found to have been in excess of the amount legally due. Reparation awarded.

T. M. Henderson for complainants.

E. H. Dulaney for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are S. S. McKay and E. S. Morgan, copartners, engaged in the produce business at Nashville, Tenn., under the firm name of McKay & Morgan. By complaint, filed April 24, 1916, they allege that the rates charged by defendants for the transportation of two mixed carloads of canned hominy and canned sauerkraut from Jeffersonville, Ind., to Nashville, in April and October, 1915, were unreasonable and in excess of the legal tariff rate. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved over the Pittsburgh, Cincinnati, Chicago & St. Louis Railway to Louisville, Ky., and the Louisville & Nashville Railroad beyond. One shipment, weighing 40,607 pounds, moved April 2, 1915, and consisted of 319 cases of canned hominy and 300 cases of canned sauerkraut. The record does not disclose the actual weights of either commodity. Charges were collected thereon in the sum of \$84, based on a carload commodity rate of 16 cents, minimum 30,000 pounds, on the hominy, and a sixth-class rate of 15 cents, minimum 24,000 pounds, applicable on the sauerkraut in carloads. The other shipment, weighing 37,787 pounds, moved October 15, 1915, and contained 475 cases of canned hominy and 100 cases of canned sauerkraut. The sauerkraut was estimated to have weighed 8,000 pounds. Charges were collected on the latter shipment in the sum of \$70.34, based on the above-mentioned 16-cent commodity rate and 30,000 pounds minimum on the hominy and

the third-class rate of 28 cents on the sauerkraut in less than carloads. The correct charges on this basis would have been \$70.40.

While complainants allege in their petition that the less-than-carload rate charged on sauerkraut in mixture with hominy is unreasonable, it is apparent from the evidence introduced that the chief issue is one of tariff interpretation.

Sauerkraut is shredded cabbage cured with brine, and is shipped in standard cans, which are packed in boxes. Complainants contend that Washburn's tariff I. C. C. No. 108, governed by the southern classification and in force at the time of movement, authorized the application on mixed carloads of hominy and sauerkraut of the commodity rate of 16 cents applicable on canned goods. Defendants contend that, due to a change in the classification and the fact that the commodity description of canned goods in the tariff did not specifically include sauerkraut, the mixed carload rate could not have been legally applied. Defendant Louisville & Nashville admits that this interpretation is different from that of other lines in the south.

The tariff in question named a rate of 16 cents on canned goods, in metal cans, in barrels, boxes, or crates, minimum weight 36,000 pounds, viz:

Broths, condensed milk, cove oysters, evaporated cream, fish, fruit butters, fruits (except fruits canned or preserved in alcoholic liquors), hominy, jellies, meats and vegetables combined, macaroni or spaghetti with cheese, meats, mincemeat, pork and beans, preserves, shellfish, soups, vegetables.

It will be noted that sauerkraut is not specifically named in the above item. However, the tariff provided under the title "index of commodities in tariff" that:

Commodities upon which specific commodity rates are named in this tariff are arranged alphabetically in the rate tables from and to each point of origin and destination, except that articles in "commodity" column below on which commodity rates are published, will be found in the commodity descriptions shown under heading "see description on."

Under the commodity "sauerkraut" the tariff states "see description on" canned goods.

On November 20, 1909, the southern classification named a specific rating of sixth class on sauerkraut in metal cans, which is still in effect. On November 1, 1912, the item "vegetables" in the classification, which was rated fifth class, was amended so as to exclude "pickled vegetables." The revised item, which was in effect when the shipments in question moved, reads as follows:

Vegetables:

Canned or preserved, including canned corn, canned hominy, canned pork and beans and canned tomatoes, but not including dried, evaporated or pickled vegetables or tomato pulp.

45 I. C. C.

Defendants concede that sauerkraut is a vegetable, but urge that it is a pickled vegetable. Their position, in brief, is that since sauerkraut was not included under the item vegetables in the classification the canned goods commodity rate was not applicable thereto.

Complainants, on the other hand, contend that under rule 7 (a) of Tariff Circular 18-A the commodity description governed and not the classification.

We are of the opinion and find that the carload rate on canned goods was properly applicable to the shipments in question. It follows that the legal rate on these shipments was 16 cents, minimum 36,000 pounds. We further find that complainants paid and bore the charges collected in excess of 16 cents per 100 pounds; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate legally applicable; and that they are entitled to reparation in the sum of \$28.92, with interest. An appropriate order will be entered.

Effective January 1, 1916, defendants' tariff was amended to provide specifically for the mixture of sauerkraut with other canned vegetables at the carload rate. The present rate on canned goods is 18 cents. There was no contention that this rate is unreasonable. No order for the future is necessary.

45 I. C. C.

No. 8731.

ASA WILCOX

v.

ERIE RAILROAD COMPANY ET AL.

Submitted September 15, 1916. Decided June 7, 1917.

Reparation awarded on account of unreasonable charges collected on a less-than-carload shipment of potatoes from Seeley Creek, N. Y., to Arch Creek, Fla.

H. D. Wilcox for complainant.

H. Wilson for Erie Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Wells, Pa. By complaint, filed March 16, 1916, he alleges that the charges collected by defendants for the transportation of a less-than-carload shipment of potatoes, in bags, from Seeley Creek, N. Y., to Arch Creek, Fla., November 14, 1914, were unreasonable and in excess of the published tariff rates. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in cents per 100 pounds unless otherwise specified.

The shipment, consisting of 116 bags of potatoes, weighed 17,400 pounds, or 150 pounds per bag, and moved by way of the Erie Railroad to Elmira, N. Y.; Pennsylvania and Philadelphia, Baltimore & Washington railroads to Potomac Yard, Va.; Southern Railway to Jacksonville, Fla.; Florida East Coast Railway to destination. No joint rate was in effect, and charges were collected in the sum of \$213.15, at a combination fourth-class rate of \$1.22½, legally applicable, composed of a rate of 52.5 cents to Jacksonville, and a rate of 70 cents beyond.

Prior to August 6, 1914, the southern classification, which governs, provided a sixth-class rating on potatoes, other than sweet, both in carloads and less than carloads. The sixth-class rate from Seeley Creek to Jacksonville at the time of movement was 36.5 cents; from Jacksonville to Arch Creek, 56 cents. On August 6, 1914, the rating on potatoes in less than carloads was increased to fourth class.

Complainant contends that the charges collected were unreasonable to the extent that they exceeded those that would have accrued at a rate of 36.5 cents north of Jacksonville, and a rate of 46 cents per sack of 165 pounds south of Jacksonville, basing his contention upon

the fact that the rate from Seeley Creek to Jacksonville formerly had been 36.5 cents, and that in *Du Puis v. F. E. C. Ry. Co.*, Docket No. 5713, unreported, decided July 31, 1914, we found that 46 cents per sack of 165 pounds was a reasonable rate on potatoes, in carloads, from Jacksonville to Lemon City, Fla., when applied as a part of the through rate and charge for the through transportation of the same commodity from Grimes' Mill, Me., to Lemon City. Arch Creek is intermediate Jacksonville to Lemon City. On November 16, 1914, the Florida East Coast published a carload commodity rate on Irish potatoes of 44 cents per sack of 165 pounds, minimum 30,000 pounds, and on November 30, 1915, a less-than-carload commodity rate of 50 cents, per sack of 165 pounds, from Jacksonville, when from beyond, to Arch Creek. On January 1, 1916, all the class rates from Seeley Creek to Jacksonville were increased, following *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, the fourth-class rate being increased to 71 cents; the sixth-class to 48 cents.

The application of a fourth-class rating on potatoes, in less than carloads, as compared with the sixth-class rating on the same commodity, in carloads, appears to be a reasonable adjustment. We do not find that the component applied on this shipment north of Jacksonville was unreasonable, but find that the component applied south of that point was unreasonable to the extent that it exceeded 50 cents per sack of 165 pounds. The through charge was therefore unreasonable. We further find that complainant made the shipment as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that he is entitled to reparation in the sum of \$63.80, with interest.

An order awarding reparation will be entered, but as the rate found reasonable has been in effect for more than a year, no order for the future is necessary.

45 I. C. C.

No. 8806.

INDEPENDENT HARVESTER COMPANY

v.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY
COMPANY ET AL.

Submitted July 14, 1916. Decided June 6, 1917.

Charges on a carload of agricultural implements from Carmel, Ind., to Plano, Ill., not shown to have been unreasonable, but found to have been illegal. Reparation awarded.

L. R. Hadlock for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of agricultural implements at Plano, Ill. By complaint, filed April 13, 1916, it alleges that the charges collected on a carload of agricultural implements shipped August 28, 1913, from Carmel, Ind., to Plano, were unreasonable. Reparation is asked. The claim was presented to the Commission informally November 5, 1914.

In March, 1913, complainant shipped the implements in question to a consignee at Carmel. In August, 1913, the consignee, having been unable to dispose of the shipment, delivered it to the Chicago, Indianapolis & Louisville Railway, hereinafter called the defendant, billed to complainant at Indianapolis, Ind., where it arrived August 30, 1913. Complainant has no branch office at that point, and on September 15, 1913, was advised by defendant's agent that the shipment was on hand and awaiting disposition orders. On October 9, 1913, after \$31 demurrage had accrued, the car was forwarded under a new bill of lading to Plano, and charges were collected in the sum of \$90.40: \$18 to Indianapolis, based on 36,000 pounds at a rate of 5 cents per 100 pounds, and \$41.40 beyond, based on 36,000 pounds at 11.5 cents per 100 pounds, plus the demurrage as stated. The rate legally applicable from Indianapolis to Plano was 14 cents per 100 pounds, minimum 24,000 pounds.

Complainant contends that had defendant observed its tariff provision applicable to returned shipments, the charges to Indianapolis would have been prepaid or it would have been necessary to secure

a written order from complainant before the shipment moved from Carmel, in which latter event complainant would have ordered the shipment returned direct to Plano. The through rate applicable from Carmel to Plano was 14 cents per 100 pounds, minimum 24,000 pounds. The shipment weighed less than that minimum and complainant insists that it should be charged only \$33.60, based on the through rate and minimum weight. The item in question, which applies only at stations of the Chicago, Indianapolis & Louisville, reads as follows:

Shipments returned to manufacturers:

On shipments of agricultural implements, bicycles and parts thereof, machinery, stoves and stove furniture, incubators, fanning mills, show cases, vehicles and parts thereof, and other articles returned to manufacturers or original shippers, this company will not only decline to advance any charges thereon but will insist on the prepayment of all freight and other charges, unless a written order by the manufacturer or original shipper to return the goods is furnished forwarding agent. In cases where such orders are presented for the return of such shipment, notation to that effect must be made on waybills by forwarding agent. The foregoing will not govern on returned shipments otherwise covered by specific restriction orders or circulars. This rule has been effective for some time past, but we find that very little if any attention has been paid to same. It is very important that these instructions be strictly complied with.

This provision is manifestly applicable only in connection with shipments which are not accepted by consignees at destination, and was inapplicable to the shipment in issue which was accepted by the consignee and not returned to complainant until five months after its receipt. The movement must therefore be viewed as an original shipment.

We find that the rate applied is not shown to have been unreasonable. It appears, however, that the freight charges collected were based upon a weight of 36,000 pounds, whereas the shipment weighed less than 24,000 pounds, the minimum weight applicable in connection with the legal rates assessed. On the basis of 24,000 pounds, the freight charges would amount to \$45.60, and the shipment was, therefore, overcharged in the amount of \$13.80. An order awarding reparation will be entered.

The car arrived in Indianapolis at 6 p. m., August 30. The defendant did not appear at the hearing and the record fails to show just when and where notice of arrival at Indianapolis was mailed to complainant. This record affords no basis for a finding with reference to the demurrage assessed.

No. 8887.

HOLLINGSHEAD & BLEI COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted September 28, 1916. Decided June 6, 1917.

Rate on staves in carloads from Womble, Ark., to Toronto, Canada, found to have been unlawful. Reparation awarded.

George F. Blei for complainant.

Fred G. Wright for St. Louis, Iron Mountain & Southern Railway Company and its receiver.

James Cameron for Grand Trunk Railway system.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of cooperage supplies, with its principal place of business at Chicago, Ill. By complaint, filed April 17, 1916, as amended, it alleges that defendants' joint rate of 34 cents per 100 pounds, charged for the transportation of two carloads of staves from Womble, Ark., to Toronto, Canada, on June 17, 1913, and September 22, 1913, was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Thebes, Ill. The claim was presented to the Commission informally May 28, 1915. Reparation is asked. Rates are stated in cents per 100 pounds.

The first shipment, weighing 49,700 pounds, was originally billed to Du Po, Ill., but was later reconsigned to Toronto. It moved: St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain, Wabash Railway, and Grand Trunk Railway of Canada, hereinafter called the Grand Trunk. The second shipment, weighing 53,600 pounds, was originally billed to Chicago, but was later reconsigned to Toronto. It moved: Iron Mountain; Cleveland, Cincinnati, Chicago & St. Louis Railway; Chicago, Indiana & Southern Railroad, now a part of the New York Central Railroad; Michigan Central Railroad; and Canadian Pacific Railway.

Charges were collected on the first shipment in the sum of \$168.98 and on the second in the sum of \$182.24 on the basis of a joint

rate of 34 cents, legally applicable. The intermediate rates contemporaneously in effect over the routes of movement to and from Thebes were 13 cents to Thebes and 19 cents beyond, a total of 32 cents. This violation of the fourth section was not protected by an appropriate application. On February 23, 1915, the rate from Womble to Thebes was increased to 15 cents, making the aggregate of the intermediate rates 34 cents, equal to the joint through rates. On March 1, 1915, the rate from Thebes to Toronto was increased to 20 cents, while the rate from Womble to Toronto was reduced to 33 cents. Effective October 10, 1915, the local rate from Womble to Thebes was increased to 16 cents, so that at the present time the joint rate is 33 cents and the lowest combination 36 cents. At the hearing the Iron Mountain and the Grand Trunk expressed willingness to make the reparation asked, provided they are not required to establish and maintain the 32-cent rate for the future. Complainant does not ask for a rate for the future, nor does it contend that the present rate is unreasonable.

We find that the rate charged on the shipments in question was unlawful to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Thebes; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found lawful; and that it is entitled to reparation in the sum of \$9.94, with interest, from the St. Louis, Iron Mountain & Southern Railway Company, Wabash Railway Company, and Grand Trunk Railway Company of Canada, and in the sum of \$10.72, with interest, from the St. Louis, Iron Mountain & Southern Railway Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, New York Central Railroad Company, Canadian Pacific Railway Company, and Michigan Central Railroad Company.

An order will be entered accordingly.

45 I. C. C.

No. 8933. .

OLALDE Y COMPAÑIA

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted November 6, 1916. Decided June 6, 1917.

Rate on fertilizer in carloads from Laredo, Tex., to Colton, Cal., originating at Mexico City, Mexico, found justified. Complaint dismissed.

No appearance for complainant.

E. H. Thornton for Galveston, Harrisburg & San Antonio Railway Company and Southern Pacific Company.

L. M. Hogsett for International & Great Northern Railway Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complaint in this case, filed March 16, 1916, sets forth that the complainant is the successor of Olalde Hermanos and is the owner of a glue and fertilizer factory at Mexico City, Mex.; alleges that the charges assessed from Laredo, Tex., to Colton, Cal., on four carloads of fertilizer shipped during October, 1914, from Mexico City, were unreasonable; and that complainant was damaged by reason of the misquotation by the defendants' agent at Mexico City of the rate applicable upon the shipments from Laredo to Colton. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipments, aggregating 194,500 pounds, originated at Mexico City and moved over the International & Great Northern Railway from Laredo to San Antonio, Tex.; Galveston, Harrisburg & San Antonio Railway to El Paso, Tex., and thence to destination over the line of the Southern Pacific Company. The charges assessed up to Laredo were not shown and are not attacked. The charges for the movement from Laredo to Colton were based on a carload commodity rate of 60 cents, legally applicable. Complainant was not represented at the hearing.

Effective July 20, 1905, a proportional carload rate of 39 cents was published on this commodity from Laredo, El Paso, and Eagle Pass, Tex., to California points, including Colton, applicable on traffic originating at Mexico City and certain other points in Mexico. This rate, which was 5 cents less than the proportional class E rate, was carried under exceptions to the western classification. Effective July 1, 1914, this rate was canceled, leaving in effect a local rate of

60 cents from Laredo, which was applied to the shipments in issue. As the rate attacked represents an increase since January 1, 1910, defendants were bound to justify it.

Defendants testified that the 39-cent proportional rate was established at a time when all the Rio Grande River crossings were open, and was influenced by the joint rate applicable by way of El Paso, the natural gateway for this traffic. On account of the disturbed conditions in Mexico the El Paso gateway was closed, and the reason for the establishment of the proportional rate by way of Laredo being removed, the rate was canceled. This statement is borne out in part by the fact that the through rate by way of El Paso and the proportional rates by way of the Rio Grande River crossings were canceled at the same time.

Defendants offered in evidence a number of commodity rates on fertilizer from various Texas points to California terminals and points intermediate taking the same rates. These rates range from 50 cents to \$1. It was also stated that the rates from Laredo are ordinarily higher than from Texas common-point territory and that the lines between Laredo and El Paso pass through a sparsely settled country which originates very little traffic. The distance from Laredo to Colton over the route of movement is 1,529 miles. The 60-cent rate yields ton-mile earnings of 7.8 mills, and, using the 40,000-pound minimum applicable in connection therewith, car-mile earnings of 15.7 cents; the 39-cent rate, ton-mile earnings of 5.1 mills, and, using a 30,000-pound minimum applicable in connection therewith, car-mile earnings of 7.7 cents.

Complainant alleged that the defendants' agent at Mexico City informed it that the 39-cent proportional rate would apply on these shipments. One of the carriers expressed willingness on this account to refund to the shipper on the basis of the 39-cent rate. However, the misquotation of a rate by a carrier's agent is not sufficient upon which to base an order awarding reparation. *A. J. Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C., 418.

We find that defendants have justified the rate assailed, and an order dismissing the complaint will be entered.

45 I. C. C.

No. 8971.

DIANA PAPER COMPANY ET AL.

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted November 11, 1916. Decided June 6, 1917.

Rate of \$2.10 per long ton on coal from certain mines in Pennsylvania on the Pennsylvania Railroad to Harrisville and Newton Falls, N. Y., not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

Thomas G. Smiley for complainants.

John M. Sternhagen for New York Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Diana Paper Company, a corporation engaged in the manufacture of catalogue paper at Harrisville, N. Y.; Newton Falls Paper Company, a corporation engaged in the manufacture of wrapping paper and bags at Newton Falls, N. Y.; and Charles J. Reeder, engaged in the coal business at Carthage, N. Y., under the name of the Carthage Coal Company. By complaint, filed June 21, 1916, they allege that the rates charged by defendants on bituminous coal from mines located upon the lines of the Pennsylvania Railroad in the coal rate group designated as the Clearfield region and related groups in Pennsylvania, to Harrisville and Newton Falls, are unreasonable and unduly prejudicial. The establishment of rates not in excess of those contemporaneously maintained to Watertown, Carthage, and Massena Springs, N. Y., is asked. Rates are stated in amounts per long ton.

Harrisville and Newton Falls are on the Carthage & Adirondack branch of the New York Central Railroad, which connects with the main line of that carrier's St. Lawrence division at Carthage, and are 21 miles and 46 miles, respectively, from Carthage, and 39 miles and 64 miles, respectively, from Watertown. Coal from mines located on the Pennsylvania in the Clearfield region and related groups to Harrisville and Newton Falls moves over the Pennsylvania lines to Himrods Junction or Genesee Junction, N. Y., thence over the New York Central through Watertown and Carthage.

The New York Central publishes a rate of \$2 from mines in the Clearfield region served by it to Harrisville and Newton Falls and also to a number of points on the main line of its St. Lawrence division, namely, Watertown, Philadelphia, N. Y., and Massena Springs,

and intermediate points, and also to Carthage, Clayton, and Cape Vincent, N. Y., located on branches connecting with the main line of the St. Lawrence division. The same rate applies from mines on the Pennsylvania in the Clearfield district and related groups to the points mentioned on the St. Lawrence division, but to Harrisville and Newton Falls the rate is \$2.10. Complainants seek the same rate to Harrisville and Newton Falls from the latter mines as applies from those mines to points on the main line and other branches of the St. Lawrence division, and as applies from mines on the New York Central to Harrisville and Newton Falls.

In justification of the higher rate to Harrisville and Newton Falls from the Pennsylvania's mines, defendants' witness testified that the operating conditions to these points are difficult and more expensive than to points on the main line and branches of the St. Lawrence division; that the Carthage & Adirondack branch is a short line running up into the Adirondack Mountains; that Newton Falls has an elevation of 1,375 feet and Harrisville an elevation of 765 feet, the grades being against the loaded movement and the curves frequent and sharp; that the movement from Watertown to the points with which comparisons are made is down grade and therefore in favor of the loaded movement; and that the traffic on the Carthage & Adirondack branch is small as compared with the traffic between Watertown and Massena Springs.

Complainants offered in evidence an exhibit showing that to points on the line of the Delaware & Hudson Company in northern New York the Pennsylvania publishes the same rates from the Clearfield region and related groups to main and branch line points and in some instances lower rates to the latter. The rate to the main-line points mentioned is \$2.75 and to several branch-line points, \$2.65. Complainants admit that the rate of \$2.65 to Saranac Lake, N. Y., one of the branch-line points, is made in competition with the short-line route over defendants' lines. We are not advised as to the conditions and circumstances surrounding the establishment of these rates to Delaware & Hudson points.

Since 1901 there has been a gradual reduction in the rates on coal to northern New York points from mines in the Clearfield region and related groups by way of the New York Central, and in connection with the Pennsylvania. Prior to 1908 the rates to Harrisville and Newton Falls were uniformly 15 cents and 20 cents, respectively, higher than to Carthage. In 1908 the rate of \$2.10 was established to Harrisville and Newton Falls, which rate was 10 cents higher than the Carthage rate. The \$2 rate to the other points mentioned on the St. Lawrence division was established in 1906, and in 1909 the New York Central extended the \$2 rate to Harrisville and Newton Falls

from mines in the Clearfield region on its line. It asserts that it secures only a portion of the haul and therefore only a portion of the revenue derived on coal from mines on the Pennsylvania and that the difficult and expensive operating conditions on the Carthage & Adirondack branch did not warrant the establishment of the \$2 rate to Harrisville and Newton Falls from mines on the Pennsylvania.

The \$2 rate is not common to all points in this territory. The local rate to Ogdensburg is \$2.10. A proportional rate of \$1.85, however, is published to this point on coal destined to Canada. To Edwards, a point located on defendants' Gouverneur & Oswegatchie branch of its St. Lawrence division, the rate is \$2.20. The distance from the Pennsylvania mines, from which complainants secure coal, to Ogdensburg and Newton Falls is the same, while the distance to Edwards is a few miles less than to Newton Falls. Defendants' witness testified that the transportation conditions with respect to traffic to Edwards are somewhat similar to those surrounding traffic to Harrisville and Newton Falls. Also that Massena Springs is located but a short distance from the St. Lawrence River and that the rates to Cape Vincent and Clayton, which are located on that river, are affected by actual or potential water competition.

The distance from a representative mine on the Pennsylvania in the Lawsonham district, which takes the present Clearfield rates, and from which complainants secure coal, to Harrisville is 488 miles; to Newton Falls, 513 miles. The present rate of \$2.10 to Harrisville yields 3.84 mills per net ton per mile; to Newton Falls, 3.65 mills per net ton per mile.

No substantial evidence was offered to sustain the allegation of undue prejudice.

We find that the rate assailed is not shown to be unreasonable or unduly prejudicial, and an order dismissing the complaint will be entered.

No. 8930.

WING SEED COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted September 28, 1916. Decided June 6, 1917.

Rate on basic slag in carloads from Locust Point, Baltimore, Md., to Mechanicsburg, Ohio, not shown to have been unduly prejudicial. Complaint dismissed.

Charles B. Wing for complainant.

W. N. King for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the retailing of seeds and fertilizers, with its principal place of business at Mechanicsburg, Ohio. By complaint, filed April 26, 1916, it alleges that the sixth-class rate of 18 cents per 100 pounds assessed on 10 carloads of ground phosphate in bags shipped from Locust Point, Baltimore, Md., to Mechanicsburg, during the period from March 3, 1914, to September 24, 1915, inclusive, was unreasonable and unduly prejudicial. Reparation is asked. At the hearing complainant abandoned the allegation of unreasonableness.

Basic slag, also known as Thomas phosphate powder and brown phosphate, is a by-product obtained in the manufacture of steel, and is imported from Europe. It is used as a basis for fertilizer, and sometimes, according to defendants, as a complete fertilizer. Complainant stated that these were probably the only shipments of basic slag to Mechanicsburg in 10 years or more.

Mechanicsburg is a local station on the Cleveland, Cincinnati, Chicago & St. Louis Railway, about 18 miles northeast of Springfield, Ohio. Complainant rests its case principally upon the statement that the rate from Baltimore to Springfield was lower than to Mechanicsburg. But at the time these shipments moved and at present the same sixth-class rate applied and applies on basic slag from Baltimore to both Springfield and Mechanicsburg.

Complainant also cited commodity rates lower than the class rates on phosphate rock in bulk in carloads, from Baltimore to various points in Ohio. This is a product of mines in this country and is used in the manufacture of fertilizer. It was testified that commodity

rates thereon are made only to points where fertilizer manufacturers are located. There is no showing of competition between phosphate rock and basic slag.

We find that the rate attacked is not shown to have been unduly prejudicial, and an order dismissing the complaint will be entered.

No. 8991.

H. L. BUSS COMPANY

v.

NEW YORK CENTRAL RAILROAD COMPANY.

Submitted November 21, 1916. Decided June 6, 1917.

Claim for damages resulting from loss of corn in transit, dismissed for want of jurisdiction.

Herbert A. Weeks for complainant.

John M. Sternhagen for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the grain and feed business, with its principal office at Boston, Mass. By complaint, filed February 11, 1916, it alleges that it has been damaged $7\frac{1}{2}$ cents per bushel on 133 bushels of corn lost in transit because defendant paid it only 82 cents per bushel for the corn lost instead of $89\frac{1}{2}$ cents per bushel. Reparation is asked.

Defendant filed a motion to dismiss on the ground that the Commission is without jurisdiction.

Our jurisdiction over claims for reparation does not extend to claims arising from loss or damage to shipments in transit, such claims being cognizable only in the courts. The complaint herein must therefore be dismissed, and an order will be entered accordingly.

No. 9242.

TIMMONS HARMOUNT

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted January 4, 1917. Decided June 6, 1917.

Rate on oak, beech, and maple crossties in carloads from Lewisburg and Edwards, Ky., to Broadford Junction, Pa., found to have been and to be unreasonable. Reparation awarded and a reasonable maximum rate prescribed for the future.

Timmons Harmount for complainant in person.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, Timmons Harmount, is engaged in the buying and selling of railroad crossties at Chillicothe, Ohio, under the firm name of the Harmount Tie & Lumber Company. By complaint, filed October 5, 1916, he alleges that the rate charged by defendants for the transportation of eight carloads of crossties from Lewisburg and Edwards, Ky., to Broadford Junction, Pa., during the period from October 5 to 13, 1914, inclusive, was unreasonable and unjustly discriminatory. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in cents per 100 pounds.

The shipments, aggregating 525,500 pounds, consisted of oak, beech, and maple crossties. They moved over defendants' lines and were delivered between October 17 and 23, 1914, inclusive. There was no joint through rate applicable, and charges were collected in the sum of \$1,366.30, based on a combination rate of 26 cents, composed of a rate of 10 cents from the points of origin to Louisville, Ky., and a rate of 16 cents beyond. Contemporaneously defendants maintained a joint rate of 23 cents on oak, beech, and maple lumber, in carloads, from and to the same points.

The crossties were sold by complainant to the Pittsburgh & Lake Erie Railroad f o. b. cars Broadford Junction, based on a freight rate not exceeding 13.5 cents. The consignee paid the freight charges and deducted from complainant's invoice price the difference between the total freight charges paid and those that would have accrued at a rate of 13.5 cents.

We find that the rate charged was, is, and for the future will be unreasonable to the extent that it exceeded and may exceed the

rate contemporaneously in effect on oak, beech, and maple lumber from Lewisburg and Edwards to Broadford Junction; that complainant made the shipments and paid and bore the charges thereon as described; that he has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that he is entitled to reparation in the sum of \$157.65, with interest.

An appropriate order will be entered.

No. 9152.

CHAMPION SHOE MACHINERY COMPANY

v.

CHICAGO & ALTON RAILROAD COMPANY ET AL.

Submitted November 29, 1916. Decided June 7, 1917.

First-class rating in the western classification on less-than-carload shipments of shoe attaching, shoe punching, shoe repairing, and shoe trimming machines, k. d. in crates, not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

C. H. Rodehaver for complainant.

R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing shoe machinery, with its principal office at St. Louis, Mo. By complaint, filed September 2, 1916, it alleges that the western classification first-class rating applied by defendants on less-than-carload shipments of shoe attaching, shoe finishing, shoe repairing, and shoe trimming machines, k. d., when the heads of the machines and easily detachable parts are in crates, is unreasonable and unduly prejudicial. The establishment of a second-class rating is asked.

These machines in less than carloads are rated first class, s. u., on skids or in boxes or crates, and second class, "k. d., heads and easily detachable parts in boxes, bases on skids, or in boxes or crates." A rule of the classification states that when a rating is provided on an article in boxes, but not in crates, that article crated will take the next class higher than when boxed.

Complainant testified that it shipped these machines k. d. with the heads bolted into substantial crates; that it regarded this method of

packing as preferable to boxing on account of the more careful handling accorded by railroad employees to shipments in crates than to those in boxes; and that damage claims on its crated shipments had been almost negligible. It referred to the rating of first class on machinery and machines, n. o. i. b. n., s. u., in barrels, boxes, or crates, and second class, k. d., in barrels, boxes, bundles, or crates.

Defendants replied that the packing requirements in connection with the ratings assailed conform to the recommendations of the Committee on Uniform Classification which were made after a careful investigation among the principal manufacturers of shoe machinery; that identical provisions with respect to packing requirements on shipments k. d. are carried in the southern and official classifications; and that they had not been objected to except by complainant. They stated that the space saved by knocking down a shoe machine is very slight; that the heads of some of these machines are easily damaged; that the packing boxes used are usually made of heavy material; that the heads are securely fastened therein; and that the principal consideration for according these machines a second-class rating when knocked down is the additional protection afforded by the boxes.

We find that the rating assailed is not shown to be unreasonable or unduly prejudicial, and an order dismissing the complaint will be entered.

No. 9084.
WHEELING CORRUGATING COMPANY
v.
PENNSYLVANIA COMPANY ET AL.

Submitted November 17, 1916. Decided June 6, 1917.

Rate on orchard heaters in carloads from Martin's Ferry, Ohio, to Medford, Oreg., found to have been unreasonable. Reparation awarded.

Edwin C. Jepson for complainant.
No appearance for the defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in sheet metal and its products, with its principal office at Wheeling, W. Va., and a factory at Martin's Ferry, Ohio. By complaint, filed July 26, 1916, it alleges that the rate of \$2.34 per 100 pounds charged by defendants on a carload of orchard heaters shipped January 22, 1914, from Martin's Ferry to Medford, Oreg., was unreasonable to the extent that it exceeded \$1.69 per 100 pounds. The claim was presented to the Commission informally October 16, 1915. Reparation is asked. Rates are stated in amounts per 100 pounds.

Orchard heaters are round sheet-iron bowls 8 or 9 inches high and about 2 feet in diameter, and are used to generate heat for the protection of crops from frost.

The shipment weighed 27,745 pounds and moved over the lines of the Pennsylvania Company to Chicago, Ill.; Chicago Great Western Railroad to Minnesota Transfer, Minn.; Great Northern Railway to Spokane, Wash.; Spokane, Portland & Seattle Railway to Portland, Oreg.; Southern Pacific Company to destination. No commodity rate applied. The western classification, which governed, rated orchard heaters, in carloads, minimum 20,000 pounds, fifth class. Charges were collected in the sum of \$649.23, at the combination fifth-class rate of \$2.34, legally applicable, composed of \$1.85 to Portland and 49 cents beyond. When the shipment moved a commodity rate of \$1.20, minimum 22,000 pounds, applied on stamped ware, orchard heaters, and other articles of the same general character, to south Pacific coast terminals. The same rate and minimum weight applied on stamped ware and kindred articles, but not on orchard heaters, to north Pacific coast points, including Portland. On June

15, 1914, orchard heaters were included within the list of articles taking the \$1.20 rate to north Pacific coast terminals, and this rate is still in effect. It is in evidence that generally rates on orchard heaters are no higher than the rates on stamped ware. All of the defendants, except the Southern Pacific, admitted on the informal docket that the rate charged was unreasonable to the extent that it exceeded \$1.69, the present rate, and expressed willingness to make reparation accordingly.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1.69 per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$180.34, with interest.

An order awarding reparation will be entered, but as the \$1.69 rate has been in effect for more than two years no order for the future is necessary.

45 I. C. C.

No. 9090.

IOLA PORTLAND CEMENT COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted December 4, 1916. Decided June 6, 1917.

Charges on cement in carloads from Iola, Kans., to Union Star, Helena, and Cosby, Mo., found to have been unlawful. Reparation awarded.

E. S. Gubernator for complainant.

M. K. Bush for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the cement business, with offices at Kansas City, Mo., and mills at Iola, Kans. By complaint, filed August 5, 1916, it alleges that the charges collected for the transportation of 14 carloads of cement from Iola to Union Star, Helena, and Cosby, Mo., during the period from November 24, 1913, to June 15, 1915, inclusive, were unreasonable and in violation of the fourth section in that they exceeded the aggregate of the intermediate rates to and from St. Joseph, Mo. Reparation is asked. The claim was presented to the Commission informally September 27, 1915. Rates are stated in cents per 100 pounds.

The shipments moved over defendants' lines through Kansas City and St. Joseph, Mo., three to Union Star, four to Helena, and seven to Cosby. They aggregated 689,320 pounds, and charges were collected thereon in the sum of \$861.67 at joint rates of 12.5 cents, minimum 30,000 pounds. The intermediate rates contemporaneously and at present in effect were 7.5 cents, minimum 38,000 pounds, from Iola to St. Joseph; 4.5 cents, minimum 40,000 pounds, from St. Joseph to Union Star; and 4 cents, minimum 40,000, from St. Joseph to Helena and Cosby, making combination through rates over the route of movement of 12 cents to Union Star and 11.5 cents to Helena and Cosby. All of these shipments weighed over 40,000 pounds each, except three, which weighed 38,000 pounds each. On basis of the combination rates and minima the total charges would have been lower than those assessed at the joint rates. On November 5, 1916, joint rates were established at 12 cents, minimum 50,000 pounds, to Union Star, and 11.5 cents, minimum 50,000 pounds, to Helena and Cosby. These rates are still in effect. Charges based

on the present joint rates and minima exceed charges which would accrue on basis of the aggregate of the intermediate rates and minima. No protective fourth section application was or is on file with the Commission covering these departures from the rule of the fourth section, and they are therefore unlawful, and should be promptly corrected.

Complainant's only contention is that the rates charged were unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and from St. Joseph. Defendants express willingness to make reparation on basis of the St. Joseph combinations, but the Missouri, Kansas & Texas Railway contends that reparation should be based upon the present minimum of 50,000 pounds.

We find that the charges assailed were unlawful to the extent that they exceeded those that would have accrued at the aggregate of the intermediate rates and carload minima contemporaneously in effect to and from St. Joseph; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued on the basis of the intermediate rates and minima and that it is entitled to reparation in the sum of \$58.67, with interest.

An appropriate order will be entered.

No. 9103.

HOLLINGSHEAD & BLEI COMPANY

v.

NEW YORK & PENNSYLVANIA RAILWAY COMPANY ET AL.

Submitted December 4, 1916. Decided June 6, 1917.

A carload of heading from Shingle House, Pa., to Carlton, N. Y., found to have been misrouted. Reparation awarded.

Paul H. Miller for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainant is a corporation engaged in the cooperage business at Chicago, Ill. By complaint, filed August 10, 1916, it alleges that the rate of $15\frac{3}{4}$ cents per 100 pounds charged by defendants on a carload of heading shipped July 14, 1914, from Shingle House, Pa., to Carlton, N. Y., was unreasonable to the extent that it exceeded 14 cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally May 3, 1915. Rates are stated in cents per 100 pounds.

The shipment, weighing 48,500 pounds, was originally consigned by complainant to Waterport, N. Y. It was delivered to the New York & Pennsylvania Railway unrouted and moved as routed by the initial carrier over the New York & Pennsylvania to Canisteo, N. Y.; Erie Railroad to Suspension Bridge, N. Y.; New York Central Railroad to Waterport. It was reconsigned to Carlton and moved to the latter point by way of the New York Central. Charges were collected in the sum of \$81.39, based on a combination rate of $15\frac{3}{4}$ cents: $8\frac{3}{4}$ cents from Shingle House to Suspension Bridge, $6\frac{1}{2}$ cents from Suspension Bridge to Waterport, and one-half cent beyond, plus a reconsigning charge of \$5. The correct charges over the route of movement were \$76.54, based on the $8\frac{3}{4}$ -cent rate from Shingle House to Suspension Bridge, and a rate of 6 cents from Suspension Bridge to Carlton, plus the \$5 reconsigning charge, so that the shipment was overcharged \$4.85. There was contemporaneously applicable over defendants' lines from Shingle House to both Waterport and Carlton a combination rate on heading, in carloads, of 14 cents, based on a rate of 8 cents by way of the New York & Pennsylvania and the Erie from Shingle House to Buffalo, and a rate of 6 cents by

way of the New York Central beyond. In connection with this rate a charge of \$5 was provided for reconsigning from Waterport to Carlton. Upon basis of the latter rate and reconsigning charge the total charges would have been \$72.90 or \$3.64 less than the legally applicable charges over the route the shipment moved.

We find that the New York & Pennsylvania Railway Company misrouted the shipment; that complainant paid and bore the charges thereon; that it was damaged by the misrouting to the extent of the difference between the charges paid and the charges that would have accrued had the shipment been forwarded by way of the route over which the 14-cent rate applied; and that it is entitled to reparation from the New York & Pennsylvania Railway Company in the sum of \$3.64, with interest. Also to reparation from all of the defendants in the sum of \$4.85, with interest, the amount of the above-mentioned overcharge.

An appropriate order will be entered.

45 I. C. C.

UNIVERSITY OF ILLINOIS LIBRARY

MAY 11 1920

No. 9112.

S. M. BULLEY & SON

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted December 5, 1916. Decided June 6, 1917.

Concentration and compression service at Lawton, Okla., canceled and subsequently restored, found to have resulted in unreasonable charges for the transportation of cotton from Elgin, Cache, Indianahoma, and Davidson, Okla., to New Orleans, La., for export. Reparation awarded.

C. M. Smith deal for complainants.

R. R. Lethem for St. Louis & San Francisco Railroad Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are A. K. Bulley, P. R. England, and G. C. Stallybrass, copartners, engaged in the cotton business at Dallas, Tex., under the firm name of S. M. Bulley & Son. By complaint, filed July 20, 1916, as amended, they allege that the charges collected by defendants on 52 bales of cotton shipped during the period from October 9, 1914, to October 16, 1914, inclusive, from Elgin, Cache, Indianahoma, and Davidson, Okla., concentrated and compressed at Lawton, Okla., and subsequently reshipped to New Orleans, La., for export, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

Six bales of cotton were shipped from Elgin, 10 from Indianahoma, 11 from Cache, and 25 from Davidson to Lawton over the St. Louis & San Francisco Railroad, hereinafter called the Frisco. Charges were assessed thereon at rates of 30 cents. The rates legally applicable to Lawton were 21 cents from Elgin and Cache, 25 cents from Indianahoma, and 41 cents from Davidson. It therefore appears that the shipments from the first three points were overcharged, and the one from Davidson undercharged. These 52 bales appear to have moved in one car over defendants' lines from Lawton to New Orleans, destined to Liverpool, England, and charges were collected at an any-quantity rate of 71.5 cents, legally applicable.

For a long time prior to October 22, 1913, defendants' tariffs provided for concentration and compression of cotton at Lawton and at other specified points on their lines in the same general territory on the basis of the through rates in effect from points of origin to final

destinations. Defendants withdrew the concentration and compression service at Lawton, effective October 22, 1913. No change was made in the service at other points. Effective November 25, 1914, the service was reestablished at Lawton and is still in effect. These shipments moved into Lawton prior to the reestablishment of the concentration and compression service.

Complainants ask reparation based on the difference between the combination rates charged and the any-quantity joint rates contemporaneously in effect of 76.5 cents from Elgin, Cache, and Indianahoma to New Orleans, and 71.5 cents from Davidson to New Orleans. The Frisco expressed willingness on the informal docket to make reparation. Defendants offered no evidence at the hearing.

The facts of record present a situation which can not be regarded in the same light as a newly established transit service.

The burden was upon the carriers to justify the resulting increase in the charges. This they have not done. We find that the charges collected on the shipments were unreasonable to the extent that they exceeded the charges that would have accrued at the joint rates contemporaneously in effect from the various points of origin to New Orleans; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation with interest. The exact amount of reparation due can not be determined upon this record, and complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Collection of the above-mentioned undercharge may be waived.

As the concentration and compression service has been in effect at Lawton for more than two years, no order for the future is necessary.

No. 9144.
COLUMBIAN IRON WORKS
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 12, 1917. Decided June 7, 1917.

Charges on cast-iron service boxes from Chattanooga, Tenn., to Jacksonville, Fla., not shown to have been unreasonable or otherwise in violation of the act. Complaint dismissed.

O. L. Bunn for complainant.

Claudian B. Northrop and *Alex M. Bull* for the defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of water-works supplies and other machinery, with its principal place of business at Chattanooga, Tenn. By complaint, filed September 2, 1916, it alleges that the charges collected for the transportation of a shipment of cast-iron service boxes from Chattanooga to Jacksonville, Fla., in April, 1915, were unreasonable and unjustly discriminatory. Reparation is asked.

Complainant's plant at Chattanooga is located on the rails of the Belt Railway of Chattanooga. The shipment was switched by that carrier to the yard of the Southern Railway and moved thence to destination over the Southern in connection with the Georgia Southern & Florida Railway. [The bill of lading contained the following notation, inserted by complainant: "1 car C. I. service boxes—weight 30,000 pounds, rate 15 cents—charges to be prepaid." The shipment was weighed by the Southern Railway at Chattanooga and the actual weight claimed by complainant was obtained from the freight bill which covers charges on "1 C. L.—C. I. S. Bxs.—16,000 pounds as 30,000 pounds." Charges were prepaid by complainant at the carload rate of 15 cents per 100 pounds, minimum 30,000 pounds. Complainant's sole contention is that charges should have been collected at the less-than-carload rate of 21 cents per 100 pounds applied to actual weight.]

The shipment was handled by the carriers as a carload shipment. Complainant contends that the notation in the bill of lading was inserted through error of its shipping clerk, who was not familiar with his duties; that complainant did not intend the shipment to move as a

carload shipment, and that as the Southern ascertained the actual weight before the car was moved from Chattanooga, it was the duty of that carrier to have handled it as a less-than-carload shipment. But there is nothing in the record to show that defendants were advised or had reason to believe that an error had been made in the billing. On the contrary, such a presumption is rebutted by the fact that complainant ordered a 40-foot car for the shipment. Furthermore, it does not appear that complainant complied with rule 7 of southern classification I. C. C. No. 19, governing the movement, which provided in part as follows:

SECTION 1. Freight, when delivered to carriers to be transported at less-than-carload or any quantity ratings, must be marked in accordance with the following requirements and specifications, except as provided in section 2 (b) of this rule or otherwise provided in specific items in this classification. If these requirements and specifications are not complied with, freight will not be accepted for transportation.

SECTION 2 (a). Each package, bundle or loose piece of freight must be plainly, legibly and durably marked by brush, stencil, marking crayon (not chalk), rubber type, metal type, pasted label (see note 1), tag (see note 2), or other method which provides marks equally plain, legible and durable, showing the name of only one consignee, and of only one town or city and state to which destined.

We find that the charges assailed are not shown to have been unreasonable or otherwise in violation of the act, and an order dismissing the complaint will be entered. *Passow & Sons v. C., M. & St. P. Ry. Co.*, 37 I. C. C., 711; and *Kyle v. M., K. & T. Ry. Co.*, 42 I. C. C., 335.

45 I. C. C.

No. 9157.

BRUNSWICK-BALKE-COLLENDER COMPANY

v.

MUNISING, MARQUETTE & SOUTHEASTERN RAILWAY
COMPANY ET AL.

Submitted December 5, 1916. Decided June 6, 1917.

Charges on tenpins in carloads from Big Bay, Mich., to Boston, Mass., not shown to have been unreasonable or otherwise unlawful. Complaint dismissed.

James J. Mullin for complainant.

S. R. Lewis for Duluth, South Shore & Atlantic Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of billiard tables and bowling alleys, with an office at Chicago, Ill. By complaint, filed August 22, 1916, it alleges that the charges collected by defendants on four carloads of tenpins shipped from Big Bay, Mich., to Boston, Mass., during the period from March 16, 1914, to November 19, 1914, inclusive, were unreasonable and unjustly discriminatory. Reparation is asked. The claim was presented to the Commission informally December 24, 1915. Rates are stated in cents per 100 pounds.

The shipments were delivered to the Munising, Marquette & Southeastern Railway at Big Bay on March 16, August 10 and 27, and November 19, 1914, and moved, as routed by the shipper, over the Munising, Marquette & Southeastern to Marquette, Mich.; Duluth, South Shore & Atlantic Railway to Sault Sainte Marie, Mich.; Canadian Pacific Railway through Canada to Newport, Vt.; and Boston & Maine Railroad thence to Boston. In the absence of a joint rate, charges were properly collected at a combination rate of 61 cents, composed of a rate of 9 cents from Big Bay to Marquette and a rate of 52 cents beyond.

The reasonableness of the charges assessed is challenged solely upon the ground that lower rates contemporaneously applied by way of Buffalo, N. Y., over routes wholly within the United States. Prior to November 16, 1914, the rate over the latter routes was 56 cents, composed of a rate of 9 cents from Big Bay to Marquette, a rate of 28½ cents from Marquette to Buffalo, and a rate of 18½ cents beyond. On November 16, 1914, the component from Marquette to Buffalo was increased to 29.4 cents, following *The Five Per Cent Case*, 31

I. C. C., 351, and on February 23, 1915, the component from Buffalo to Boston was increased to 19.4 cents, following our second decision in the above-entitled case, 32 I. C. C., 325. On April 23, 1915, a joint commodity rate of 57.8 cents was established over the route the shipments moved. This rate, which is equivalent to the present combination rate over the routes wholly within the United States, is still in effect. Defendants express willingness to make reparation upon the basis sought.

No evidence was introduced tending to prove that the rate charged was intrinsically unreasonable or discriminatory. We have repeatedly held that the existence of a lower rate over a route other than a particular route of movement and the subsequent reduction of the rate over the particular route of movement is not sufficient to establish the unreasonableness of the previous rate. The shipper could have used any of the other routes taking the lower rate, but chose the one over which the shipment moved.

We find that the charges assailed are not shown to have been unreasonable or otherwise in violation of the act, and an order dismissing the complaint will be entered.

45 I. C. C.

UNIVERSITY OF ILLINOIS LIBRARY

1915

No. 9158.

PROCTER & GAMBLE COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 1548
AND 3965.

Submitted November 24, 1916. Decided June 6, 1917.

1. Rate on cottonseed oil from Hillsboro, Ala., to Ivorydale, Ohio, found to have been unreasonable. Reparation awarded.
2. Fourth section relief denied.

Wm. H. McGuffey for complainant.

R. Walton Moore for Southern Railway Company and Cincinnati, New Orleans & Texas Pacific Railway Company.

R. D. Hunter for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in refining cottonseed oil at Cincinnati, Ohio. By complaint, filed August 14, 1916, it alleges that the rate of 34.5 cents per 100 pounds charged on three carloads of cottonseed oil shipped from Hillsboro, Ala., to Ivorydale, Ohio, in January and February, 1915, was unreasonable to the extent that it exceeded 22.5 cents per 100 pounds. Reparation is asked. Those portions of Fourth Section Applications No. 1548 of Southern Railway Company, and No. 3965 of Cincinnati, New Orleans & Texas Pacific Railway Company, by which authority is sought to continue rates on cottonseed oil in carloads from Hillsboro and Decatur, Ala., to Ivorydale, Ohio, lower than the rates contemporaneously maintained on like traffic from intermediate points, were set for hearing with the complaint. Rates are stated in cents per 100 pounds.

Hillsboro is located in northern Alabama, on the Southern Railway, 13 miles west of Decatur, Ala. Decatur is located on the Southern, 460 miles south of Cincinnati. Traffic from Hillsboro and Decatur moves over the same route to Cincinnati. Ivorydale is within the switching district of Cincinnati and takes the Cincinnati rates.

The shipments, weighing 143,095 pounds, moved over the Southern to Chattanooga, Tenn.; Cincinnati, New Orleans & Texas Pacific to

Cincinnati; Cleveland, Cincinnati, Chicago & St. Louis to destination. Charges were collected in the sum of \$493.68, based on a combination rate of 34.5 cents, composed of the sixth-class rate of 12 cents to Decatur, and a commodity rate of 22.5 cents beyond, which rate was legally applicable. Complainant contends that it is unreasonable to charge 12 cents for 13 miles and 22.5 cents for 460 miles of the through movement. Defendants admit that the rate charged was unreasonable to the extent that it exceeded 22.5 cents, and on March 16, 1915, established the 22.5-cent rate from Hillsboro to Cincinnati including Ivorydale.

Complainant compares the 34.5-cent rate charged for the distance of 473 miles, with the following rates from other points in Alabama to Cincinnati: 22.5 cents from Decatur, Florence, Sheffield, and Tusculumbia, 460, 505, 503, and 503 miles, respectively; and 25 cents from Birmingham, Epes, Eutaw, Haleyville, Jasper, Montgomery, Oxford, Prattville, Selma, Sulligent, Talladega, and Tuscaloosa, from 519 to 608 miles.

Defendants assert that commodity rates from oil mills at intermediate points between Hillsboro and Decatur on the one hand and Ivorydale on the other are not in excess of 22.5 cents. It was conceded, however, that there might be intermediate points from which higher class rates applied where no cottonseed oil was manufactured or from which a shipment was improbable, and where commodity rates had not been established. In *Rates on Tropical Fruits from Gulf Ports*, 30 I. C. C., 621, 633, a similar situation was developed with respect to establishing commodity rates to intermediate points. We observed that rule 77 of Tariff Circular 18-A was designed to cover such cases, and held that the departures in question were not justified. Following that case, the fourth section applications will be denied to the extent that they are involved.

We find that the 34.5-cent rate charged on the shipments in question was unreasonable to the extent that it exceeded 22.5 cents per 100 pounds. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$171.72, with interest. As the 22.5-cent rate has been in effect for more than two years, no order for the future is necessary.

Appropriate orders will be entered.

No. 9196.

PITTMAN & HARRISON COMPANY

v.

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY
COMPANY ET AL.

Submitted January 29, 1917. Decided June 6, 1917.

Charges on oats in carloads from Gunter, Tex., to Rayne, La., milled in transit at Sherman, Tex., originally destined to Franklin, La., and the tariff rule prohibiting reconsignment at the through rate after expiration of the first 72 hours from the time of the arrival of the shipment at first destination, not shown to have been or to be unreasonable. Complaint dismissed.

L. C. Voelkel for complainant.

Lawrence F. Daspit for Morgan's Louisiana & Texas Railroad & Steamship Company.

Fred H. Wood; Denegre, Leovy & Chaffe; and Baker, Botts, Parker & Garwood for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale grain and seed business at Sherman, Tex. By complaint, filed September 25, 1916, as amended, it alleges that the combination rate of 30 cents per 100 pounds charged by defendants for the transportation of a carload of oats in February, 1916, from Gunter, Tex., to Franklin, La., reconsigned to Rayne, La., was unreasonable to the extent that it exceeded a joint through rate of 20 cents per 100 pounds. A tariff rule of defendant Morgan's Louisiana & Texas Railroad & Steamship Company, prohibiting reconsignment at the through rate after the expiration of the first 72 hours from the time of the arrival of a shipment at its first destination, is also attacked as unreasonable. Reparation is asked and the establishment of a reasonable reconsigning rule for the future. Rates are stated in cents per 100 pounds.

The shipment, weighing 38,400 pounds, originated at Gunter in February, 1916, was milled in transit at Sherman, and moved from that point February 17, 1916, destined to Franklin. On February 22, prior to arrival of the shipment at the latter point, complainant requested that it be stopped in transit. On the following day it was stopped at Lafayette where it was held for disposition, and complainant so notified. On March 22, 1916, complainant reconsigned it to

Rayne and charges were collected at a rate of 30 cents, composed of a joint rate of 20 cents from Gunter to Lafayette and a rate of 10 cents from Lafayette to Rayne. The charges include \$28 demurrage which is not assailed. The joint rate of 20 cents applied from Gunter and Sherman to Lafayette and Rayne. The tariff publishing this rate provided that the rules of the individual participating carriers would apply relative to reconsignment. The transit service at Sherman was authorized by a tariff of the St. Louis, San Francisco & Texas Railway, but the tariff of Morgan's Louisiana & Texas Railroad & Steamship Company, which governed the movement from Lafayette, provided for change in destination at the through rate only when such change was made within 72 hours after notice of arrival of the car.

Complainant contends that the charges collected were unreasonable because of the 72-hour limitation on reconsignments, and points out that no similar restriction in Morgan's Louisiana & Texas Railroad & Steamship Company tariffs applies to the reconsignment of trans-continental shipments on import and export traffic, or on shipments of perishables, and also that certain tariffs of the Southern Pacific Texas lines, the Texas & Pacific Railway, and the St. Louis & San Francisco Railway permit reconsignment of grain without restriction as to time.

Defendants contend that the 72-hour limitation is a reasonable restriction upon reconsignment; that reconsignment rules vary on different lines as well as on different classes of traffic; and that such a provision aids the conservation of equipment. On December 24, 1916, the limitation of 72 hours was removed from the tariff of the Morgan's Louisiana & Texas Railroad & Steamship Company.

In *Colorado Fuel Co. v. C. & S. Ry. Co.*, 38 I. C. C., 690, and other cases, we found that a tariff rule limiting reconsignment at the through rate to a period of 72 hours after the arrival of shipments at the first destination was not unreasonable. We find that the charges and rule assailed are not shown to have been or to be unreasonable, and an order dismissing the complaint will be entered.

No. 9220.
SCUDDERS GALE GROCER COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 17, 1917. Decided June 6, 1917.

Rate on kraut in carloads from Austin, Ind., to Cairo, Ill., found to have been unreasonable. Reparation awarded.

Ray Williams for complainant.

F. B. Clark for St. Louis, Iron Mountain & Southern Railway Company.

C. S. Bourque for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the grocery business at Cairo, Ill. By complaint, filed September 25, 1916, as amended, it alleges that the rate of 24 cents per 100 pounds charged by defendants for the transportation of a carload of kraut shipped December 24, 1913, from Austin, Ind., to Cairo, was unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. The claim was presented to the Commission informally January 8, 1915. Rates are stated in cents per 100 pounds.

The shipment, weighing 39,000 pounds, moved as routed by the shipper over the Pittsburgh, Cincinnati, Chicago & St. Louis Railway to New Albany, Ind.; Southern Railway to East St. Louis, Ill.; and St. Louis, Iron Mountain & Southern Railway to Cairo. There was no joint through rate in effect, and charges were collected in the sum of \$93.60. The rate legally applicable was a combination fifth-class rate of 24.2 cents, composed of a rate of 17 cents from Austin to Thebes, Ill., and a rate of 7.2 cents beyond. An undercharge of 78 cents is outstanding. On November 1, 1915, a joint fifth-class rate of 17.9 cents, minimum 36,000 pounds, governed by the official classification, was established on kraut over the route of movement, and this rate is still in effect. Complainant contends that the charges collected were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded the charges that would have accrued at the present rate. No evidence was adduced in support of the allegations of unjust discrimination or undue prejudice.

When the shipment moved the initial carrier and the Southern Railway participated in a rate of 17 cents from Austin to Cairo in connection with the Mobile & Ohio and Illinois Central railroads, but through oversight the rate was not published in connection with the St. Louis, Iron Mountain & Southern. Following *The Five Per Cent Case*, 31 I. C. C., 352, the 17-cent rate was increased to 17.9 cents, which is the present rate over all the routes mentioned. The distances by way of the routes named are substantially the same. Cairo is 455 miles from Austin by the route of movement. The 24.2-cent rate yielded 10.6 mills per ton-mile, and, based upon the weight of the shipment in question, 20.6 cents per car-mile. The present rate yields 7.9 mills per ton-mile, and, based on the weight of the shipments in question, 15.3 cents per car-mile. Defendants admit that the rate charged was unreasonable and are willing to make reparation on basis of the 17.9-cent rate.

We find that the rate assailed was unreasonable to the extent that it exceeded 17.9 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$23.79, with interest. Collection of the undercharge above mentioned may be waived.

An order awarding reparation will be entered, but as the rate herein found reasonable has been in effect for more than a year no order for the future is necessary.

45 I. C. C.

No. 9227.

J. C. RAWSON

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY
COMPANY ET AL.

Submitted January 18, 1917. Decided June 6, 1917.

Carload of bituminous lump coal from Harrisburg, Ill., to Milbank, S. Dak., found to have been misrouted. Reparation awarded.

S. B. Houck for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the fuel business at Milbank, S. Dak. By complaint, filed October 2, 1916, he alleges that, due to misrouting, unreasonable charges were collected on a carload of bituminous lump coal shipped September 11, 1915, from Harrisburg, Ill., to Milbank. Reparation is asked. Rates are stated in amounts per net ton, except as otherwise noted.

The shipment was delivered to the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Big Four, at Harrisburg, consigned to complainant at Milbank and routed "C. M. & St. P." The agent of the Big Four at point of origin added "Peo., C. R. I. & P., Davenport" to the routing specified by the shipper. The coal weighed 72,300 pounds and moved in accordance with the modified routing over the Big Four to Peoria, Ill., Chicago, Rock Island & Pacific Railway to Davenport, Iowa; Chicago, Milwaukee & St. Paul Railway beyond. No joint rate was applicable. Charges were collected in the sum of \$142.80, based on a rate of \$3.95, composed of a rate of \$1.30 to Davenport and a rate of \$2.65 beyond. The \$1.30 rate from Harrisburg to Davenport was legally applicable for that portion of the haul. Complainant states that the component legally applicable from Davenport to Milbank was \$2.55. The Chicago, Milwaukee & St. Paul's tariff I. C. C. No. B-2506, in effect when the shipment moved, named a rate of \$2.55 on this traffic from Rock Island, Ill., to Milbank, and this rate is still in effect. Shipments from and to those points pass en route through Davenport. The above tariff provided that rates from intermediate stations not indexed therein would be the same as shown in the tariff from the next

more distant station. Davenport was indexed in the tariff, and therefore the \$2.55 rate was inapplicable from Davenport to Milbank. A class D rate of 22 cents per 100 pounds, equivalent to \$4.40 per net ton, applied and applies on lump soft coal, in carloads, from Davenport to Milbank by way of the Chicago, Milwaukee & St. Paul. The rate from Davenport, higher than the rate from Rock Island, was and is protected by an appropriate fourth section application not yet passed upon by the Commission. The rate legally applicable via the route of movement was a combination rate of \$4.15, composed of a rate of \$1.30 from Harrisburg to Davenport, a rate of 30 cents from Davenport to Rock Island, and a rate of \$2.55 from Rock Island to destination. The correct charges over the route of movement were \$150.02, so that the shipment was undercharged \$7.22.

When the shipment moved a combination rate of \$3.32, composed of a rate of 77 cents to Peoria and a rate of \$2.55 from Peoria to Milbank, applied on this traffic by way of the Big Four to Peoria; Chicago, Rock Island & Pacific to DePue, Ill.; Chicago, Milwaukee & St. Paul beyond. Complainant contends that the only routing specified by the shipper was by way of the Chicago, Milwaukee & St. Paul, and the Big Four admits that the additional routing instructions appearing on the bill of lading were erroneously inserted by one of its billing clerks.

We find that the shipment was misrouted by the Cleveland, Cincinnati, Chicago & St. Louis Railway Company; that complainant paid and bore the charges thereon, and was damaged by the misrouting to the extent of the difference between the charges paid and the charges that would have accrued had the shipment been forwarded by way of the route over which the \$3.32 rate applied; and that it is entitled to reparation from the Cleveland, Cincinnati, Chicago & St. Louis Railway Company in the sum of \$22.78, with interest.

As above noted, the shipment was undercharged \$7.22. Collection of the undercharge from complainant may be waived. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company should make settlement with its connections on basis of the rate legally applicable over the route of movement.

An appropriate order will be entered.

No. 8943.

WALTER A. ZELNICKER SUPPLY COMPANY

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

Submitted September 7, 1916. Decided June 6, 1917.

Rate on a carload of steel rails from St. Francis, Ark., to Memphis, Tenn., found to have been unreasonable. Reparation awarded.

John D. Fidler for complainant.

R. D. Coleman for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in railway and other supplies at St. Louis, Mo. By complaint, filed June 8, 1916, it alleges that the rate of \$4.50 per long ton charged by defendant for the transportation in June, 1915, of a carload of used steel rails from St. Francis, Clay county, Ark., to Memphis, Tenn., was unreasonable to the extent that it exceeded a rate of \$2.50 per long ton applicable in the opposite direction. Reparation is asked. Rates are stated in amounts per long ton, unless otherwise specified.

The shipment, weighing 25,600 pounds, was delivered to the defendant unrouted and moved over its line, 198 miles. Freight charges were collected in the sum of \$90 plus a switching charge of \$2 per car. The latter charge is not assailed. No rate was specifically applicable over the route of movement and it therefore becomes necessary to determine whether the charges collected were reasonable, and, if not, what would have been reasonable charges. *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C., 90.

At the time of movement, defendant maintained a rate of \$2.50 on steel rails, in carloads, minimum 44,800 pounds, from Memphis to St. Francis and adjacent points on its line. On October 5, 1915, the same rate was established from St. Francis to Memphis and is still in effect. Defendant states that there were no transportation conditions that warranted charges from St. Francis to Memphis higher than the charges applicable in the opposite direction. It admits that the rate charged was unreasonable to the extent that it exceeded \$2.50, and is willing to make reparation accordingly.

The rails in question were worth \$16.50 per ton. The present rate of \$2.50, which yields 12.7 mills per long ton per mile, is in line with

the rates on steel rails in carloads, from other points in the same territory to Memphis.

We find that the rate charged on the shipment in question was unreasonable to the extent that it exceeded a rate of \$2.50 per long ton, minimum 44,800 pounds; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found unreasonable; that it was damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate of \$2.50 per long ton, minimum 44,800 pounds, plus the switching charge of \$2 per car, and that it is entitled to reparation in the sum of \$40, with interest.

An order awarding reparation will be entered, but as the \$2.50 rate has been in effect from St. Francis to Memphis for more than a year, no order for the future is necessary.



No. 9045.

EMPIRE COTTON OIL COMPANY

v.

SEABOARD AIR LINE RAILWAY COMPANY ET AL.

Submitted January 13, 1917. Decided June 6, 1917.

Rate on cotton seed in carloads from Alachua, Fla., to Quitman, Ga., found to have been unreasonable. Reparation awarded.

S. Linthicum for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION.

Complainant is a corporation engaged in the manufacture of cotton-seed products, with its principal office at Atlanta, Ga., and a mill at Quitman, Ga. By complaint, filed July 10, 1916, it alleges that the rate of \$3.90 per net ton charged by defendants for the transportation in December, 1913, of a carload of cotton seed from Alachua, Fla., to Quitman, was unreasonable to the extent that it exceeded \$2.42 per net ton. Reparation is asked. The claim was presented to the Commission informally April 1, 1914. Rates are stated in amounts per net ton.

The shipment, weighing 55,750 pounds, was delivered to the Seaboard Air Line Railway and moved over that line to Greenville,

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Fla., and the South Georgia Railway thence to Quitman, 180 miles. No joint rate was in effect, and charges were collected in the sum of \$108.76 at a combination rate of \$3.90, composed of \$1.70 to Jacksonville, Fla., and a rate of \$2.20 beyond. The shipment did not move through Jacksonville but the Jacksonville combination was applicable under rule 5 (b) of Tariff Circular 18-A. On April 3, 1914, subsequent to the movement, a joint through rate of \$2.42 was established over the route of movement, and this rate is still in effect. An equal rate applied and applies from and to the points in question by way of the Atlantic Coast Line Railroad all the way, and a rate of \$2.75 applied and applies from Alachua to Bainbridge, Ga., by way of the Seaboard Air Line and the Georgia, Florida & Alabama railways, 238 miles. Defendants admitted on our informal docket that the rate charged was unreasonable to the extent that it exceeded \$2.42, and are willing to make reparation accordingly.

The rate charged and the present rate yielded and yield 21.7 mills and 13.4 mills per ton-mile, respectively, and based on the weight of the shipment in question, 60 cents and 37.5 cents per car-mile, respectively.

We find that the rate charged on the shipment was unreasonable to the extent that it exceeded \$2.42 per net ton; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it was damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$41.30, with interest.

An order awarding reparation will be entered, but as the rate herein found reasonable has been in effect for more than two years, no order for the future is necessary.

No. 8807.

ARLINGTON COTTON OIL COMPANY

v.

CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
972, 1530, 1573, 1952, 2379, AND 3692.

Submitted July 24, 1916. Decided June 12, 1917.

1. Present rates on coal in carloads from certain points in Alabama and Kentucky to Arlington, Ga., not shown to be unreasonable or unduly prejudicial. Complaint dismissed.
2. Fourth section relief denied.

J. M. Cowart for complainant.

Willis H. Fowle for Central of Georgia Railway Company; Seaboard Air Line Railway Company; Georgia, Florida & Alabama Railway Company; and Louisville & Nashville Railroad Company.

C. J. Acosta for Georgia, Florida & Alabama Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cottonseed oil and its products at Arlington, Ga. By complaint, filed March 23, 1916, it alleges that defendants' rates on coal in carloads from certain points in Alabama and Kentucky to Arlington are unreasonable and unduly prejudicial to the extent that they exceed the rates to Cuthbert, Ga., and as compared with the rates to Bainbridge, Albany, and Tifton, Ga., and Dothan, Ala. The establishment of reasonable rates for the future is asked. Rates are stated in amounts per net ton.

Arlington is located in the southern portion of Georgia on the Central of Georgia and the Georgia, Florida & Alabama railways, 27 miles south of Cuthbert, 36 miles southwest of Albany, 40 miles north of Bainbridge, and 41 miles northwest of Tifton.

Rates on coal from Alabama and Kentucky to the destinations involved are based on Birmingham, Ala. Mining points in the immediate vicinity of Birmingham are given the Birmingham rate and are in what is known as nondifferential territory. Other mining points in Alabama take, according to distance, differential rates from

5 to 20 cents higher than Birmingham and are in what is known as differential territory. The majority of Alabama mines, 163 in number, are in nondifferential territory.

At the time the complaint was filed the rate on coal from mines in the Birmingham nondifferential territory to Arlington was \$2.05. There was contemporaneously in effect on like traffic from the same mines to Cuthbert and Albany a rate of \$1.75; to Bainbridge and Tifton, \$1.85. There are cottonseed mills at these points with which complainant competes. Complainant contends that it is entitled to the same rates as Albany and Cuthbert, but submitted in support of its complaint little evidence of probative value.

On August 21, 1916, the rate to Arlington was reduced to \$1.85, the rate applicable to Bainbridge and Tifton. A corresponding reduction of 20 cents was made from the differential mines.

At the time the complaint was filed the rate on coal from Coal Creek, Tenn., which is said to be the basing point for rates from Kentucky mines, to Arlington was \$2.50. This rate was reduced to \$2.30, simultaneously with the reduction in the rate from the Birmingham mines, with like reductions from the differentially related Kentucky mines. The table below shows the rates on coal, in carloads, which became effective on August 21, 1916, from Birmingham and Coal Creek to Arlington, Cuthbert, Bainbridge, Albany, and Tifton, together with the working short-line distances and the ton-mile earnings. An assembling mileage of 20 miles has been added in all cases in arriving at the distances from Birmingham:

To—	From Birmingham.			From Coal Creek.		
	Distance.	Rate.	Ton-mile earnings.	Distance.	Rate.	Ton-mile earnings.
	<i>Miles.</i>		<i>Mills.</i>	<i>Miles.</i>		<i>Mills.</i>
Arlington.....	312	\$1. 85	5. 93	441	\$2. 30	5. 22
Cuthbert.....	222	1. 75	7. 88	414	2. 20	5. 31
Bainbridge.....	288	1. 85	6. 42	480	2. 45	5. 10
Albany.....	276	1. 75	6. 34	415	2. 20	5. 30
Tifton.....	318	1. 85	5. 82	441	2. 10	4. 76

The shortest route over which coal could move from the Birmingham mines to Arlington would be by way of the Louisville & Nashville Railroad to Montgomery, Ala., Central of Georgia to Cuthbert, and the Georgia, Florida & Alabama beyond, a distance of 249 miles, or 27 miles greater than the short-line distance to Cuthbert. By that route the \$1.85 rate to Arlington would yield 7.43 mills per ton-mile, or less than the revenue from the rate to Cuthbert. There is, however, no rate applicable via that route. The Central of Georgia, having its own rails into Arlington, does not participate in the movement of coal to that point over the Montgomery route in

connection with the Georgia, Florida & Alabama from Cuthbert. Therefore the distances to Arlington over the shortest working routes, by way of the Louisville & Nashville and Central of Georgia, 316 miles, and by way of the Central of Georgia alone, 312 miles, are 94 and 90 miles, respectively, greater than the short-line distance to Cuthbert. The movement to Cuthbert through Montgomery is a two-line haul, while the short-line extension of that route to Arlington would involve a three-line haul.

We find that the present rates are not shown to be unreasonable or unduly prejudicial, and the complaint will be dismissed.

Those portions of various fourth section applications filed by defendants, wherein authority is sought to continue rates on coal, in carloads, from certain points in Alabama and Kentucky to Bainbridge lower than the rates contemporaneously applicable on like traffic to Arlington and other intermediate points, were heard with the complaint. Defendants observed at the hearing that, except at a few local points on the Georgia, Florida & Alabama, the fourth section departures in question have been eliminated. On behalf of the Georgia, Florida & Alabama it was testified that the fourth section departures on that line are continued under authority of our Fourth Section Order No. 3866; but that order does not authorize those departures, and, as they have not been justified, fourth section relief will be denied.

Appropriate orders will be entered.

No. 8678.

J. T. & A. HAMILTON

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted July 14, 1916. Decided June 12, 1917.

Charges on empty glass bottles and glass bottle stoppers from Butler, Pa., to Los Angeles, Cal., not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

J. W. Hamilton for complainants.

George G. Herring for Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are James T. Hamilton, James W. Hamilton, Albert G. Hamilton, and Frank A. Hamilton, copartners, engaged in the manufacture of glass bottles and flasks under the trade name of J. T. & A. Hamilton, with their principal office and place of business at Pittsburgh, Pa., and a factory at Butler, Pa. By complaint, filed February 24, 1916, they allege that the charges collected by defendants for the transportation of a shipment of empty glass bottles and glass bottle stoppers, shipped April 1, 1915, from Butler to Los Angeles, Cal., were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked and the establishment of either a mixed carload rate on glass bottles and glass bottle stoppers or a less-than-carload rate on glass bottle stoppers lower than the present rate.

The shipment consisted of 283 boxes and 65 crates of empty glass bottles, aggregating 28,370 pounds, and 60 boxes of glass bottle stoppers, aggregating 7,200 pounds. Charges were collected in the sum of \$485.40, at a commodity rate of 85 cents per 100 pounds, minimum 30,000 pounds, on the bottles, and the second-class rate of \$3.20 per 100 pounds, governed by the western classification, applicable on stoppers, in less than carloads, from and to the points involved. An examination of the tariffs on file with the Commission shows that the second-class rate in effect from Butler to Los Angeles at the time the shipment moved was \$3.10 per 100 pounds. The shipment was therefore overcharged \$7.20.

Complainants contend that glass stoppers are essential parts of glass bottles; that they load compactly and are less liable to damage

in transit than glass bottles; and that the maintenance of a higher rate on stoppers than on bottles is unreasonable and results in unjust discrimination. They cite commodity rates on common glassware, glass founts, glass shades and globes, lamp chimneys, cut glass, and confectioners', druggists', and tobacconists' jars, in carloads and less than carloads, lower than the rates applicable on glass stoppers. The rates cited consist merely of references to published tariffs and are of little or no value for comparative purposes.

Complainants' principal competitors, located at points east of the Mississippi River, pay identical rates for similar shipments. The bottles were sent to one consignee, the stoppers to another. Complainants have since made but one shipment of stoppers to Los Angeles and it moved over a rail-and-water route. Defendants deny the allegations of the complaint and resist the establishment of a mixed carload rate.

It does not appear that there is a commercial or public necessity for the establishment of the mixed carload rate asked and the evidence adduced fails to support complainants' contentions that the charges were, or are, unreasonable, unjustly discriminatory, or unduly prejudicial. Moreover, it appears that the freight charges were paid and borne by the consignee and not by complainant. The overcharge of \$7.20 should be refunded, with interest, to the party properly entitled thereto.

An order dismissing the complaint will be entered.

45 I. C. C.

No. 8923.

SUNDERLAND BROTHERS COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted October 2, 1916. Decided June 12, 1917.

Rate on building brick in carloads from Buffville, Kans., to Chappell, Nebr., not shown to have been unreasonable, unduly prejudicial, or otherwise unlawful. Complaint dismissed.

H. S. Colvin for complainant.

Fred G. Wright for Missouri Pacific Railway Company.

C. B. Matthai for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in building material at Omaha, Nebr. By complaint, filed June 3, 1916, it alleges that the rate of 25 cents per 100 pounds charged by defendants for the transportation of five carloads of building brick from Buffville, formerly Buff City, Kans., to Chappell, Nebr., during the period from April 28, 1915, to June 8, 1915, inclusive, was unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section to the extent that it exceeded a rate of 20 cents per 100 pounds contemporaneously maintained by defendants from Neodesha, Kans., a farther distant point. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments aggregated 246,400 pounds and moved as routed by the shipper over the Missouri Pacific Railway to Lincoln, Nebr., and the Union Pacific Railroad beyond, 698 miles. Charges were collected in the sum of \$616.01 at a combination rate of 25 cents, composed of a commodity rate of 9 cents from Buffville to Lincoln and a class E rate of 16 cents beyond. A joint rate of 20 cents published by the Union Pacific in conjunction with the Missouri Pacific contemporaneously applied on like traffic from Neodesha and Buffville, the latter point being directly intermediate between Neodesha and Chappell over the Missouri Pacific to Kansas City, Mo., and the Union Pacific beyond, 718 miles.

Complainant contends that the 20-cent rate also applied over the route of movement, but an examination of the tariffs on file with

this Commission discloses that this rate did not and does not apply over this route from either Buffville or Neodesha. The rate charged did not involve any departure from or violation of the fourth section.

Defendant Union Pacific states that Kansas City is recognized by it as the proper point of interchange with the Missouri Pacific on traffic from the originating territory, a route over which it receives a longer haul than it would over that by way of Lincoln.

Complainant calls attention to a 20-cent rate maintained by defendants on cement from points in the Kansas gas belt to Nebraska and Wyoming points. This rate, however, is not applicable over the route of movement.

The 25-cent rate charged yielded 7.2 mills per ton-mile, and, based on 49,280 pounds, the average weight of the shipments involved, an average revenue of \$123.20 per car and 17.7 cents per car-mile.

The existence of a lower rate over another route does not warrant the condemnation of the rate charged. If the shipper had not designated any routing or had designated the route over which the 20-cent rate applied the damage alleged could have been avoided.

We find that the rate charged is not shown to have been unreasonable, unduly prejudicial, or otherwise unlawful, and an order dismissing the complaint will be entered.

45 I. C. C.

No. 8946.

A. W. BURRITT COMPANY

v.

CANADIAN PACIFIC RAILWAY COMPANY ET AL.

Submitted October 17, 1916. Decided June 12, 1917.

Rule governing milling in transit at Long Pond, Me., of lumber shipped from points in New Brunswick, Canada, to Hoosick Falls, N. Y., not found to have been unreasonable or to have resulted in unreasonable charges. Complaint dismissed.

Arthur B. Hayes for complainant.

G. F. Snyder for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with its principal office at Bridgeport, Conn. By complaint, filed June 9, 1916, as amended, it attacks as unreasonable the rates charged for, and the transit rule applicable to, the transportation of certain carloads of rough lumber, in December, 1913, from points in New Brunswick, Canada, to Hoosick Falls, N. Y., dressed in transit at Long Pond, Me. Reparation is asked. The claim was presented to the Commission informally November 4, 1915. Rates are stated in cents per 100 pounds.

The shipments, six in number, aggregating 337,100 pounds, originated at New River, Fairville, and West St. John, New Brunswick, on the Canadian Pacific Railway, over which line they moved to Long Pond, where the lumber was resawed and dressed in transit and subsequently, between January 10 and 20, 1914, reshipped to Hoosick Falls. The outbound shipments aggregated 312,800 pounds and moved over the Canadian Pacific to Lennoxville, Canada, thence over the Boston & Maine Railroad to final destination, approximately 656 miles from points of origin.

The transit tariff of the Canadian Pacific, which governed, provided as follows:

Lumber for planing or sorting, reshipped within 10 days after arrival at planing or sorting point, may be given benefit of through rate (in effect at time of shipment from original shipping points) original shipping point to final destination, provided latter is on the direct run, plus 1 cent per 100 pounds for stop-off privilege.

The lumber was not reshipped from Long Pond within the specified time, and charges for the through transportation were col-

lected in the total sum of \$876.15, based on the applicable local rates of 13 cents to Long Pond and 14 cents beyond, and the actual inbound and outbound weights. The joint rate in effect from points of origin to final destination was and still is 14 cents.

It appears that complainant is the only shipper using this transit at Long Pond, and upon its protest that the transit period allowed was too short, the Canadian Pacific issued its tariff I. C. C. No. E-1680, effective March 24, 1914, which extended the transit period at that point to 30 days and provided for the protection of the through rate from the points of origin to destination, plus a stop-off charge of 1 cent per 100 pounds. This tariff also provided that on shipments of lumber which arrived at Long Pond prior to the "issued" date of this tariff a period of six months from the first 7 a. m. after their arrival would be granted for their reshipment. The shipments here considered were reshipped from Long Pond in January, 1914, prior to the issuance of this tariff. Complainant expresses satisfaction with the 30-day period now in effect, and the only question involved is that of reparation.

Complainant contends that the 10-day period for transit at Long Pond was too short and that this time limit resulted in the collection of unreasonable charges to the extent that they exceeded those that would have accrued at the joint rate contemporaneously in effect, plus the 1-cent stop-off charge. In comparison with the transit period allowed, complainant cites periods of 6 months allowed by the Boston & Maine and Baltimore & Ohio Southwestern railroads and 12 months by the Cleveland, Cincinnati, Chicago & St. Louis Railway and Louisville & Nashville Railroad. Defendants are willing to make reparation on basis of the rates and rule subsequently established, but deny that their rates and rule were unreasonable or otherwise unlawful.

The record does not justify a finding that the rule or rates attacked were unreasonable. To grant reparation upon the basis asked would be tantamount to sanctioning the retroactive application of a transit arrangement which we have repeatedly refused to do unless to remove an unlawful discrimination. *Freeman v. S. Ry. Co.*, 42 I. C. C., 736.

An order dismissing the complaint will be entered.

45 I. C. C.

No. 8964.

WYOMING SHOVEL WORKS

v.

DELAWARE & HUDSON COMPANY ET AL.

Submitted September 27, 1916. Decided June 9, 1917.

Rate on ash logs in carloads from Thurman, N. Y., to Wyoming, Pa., found to have been unreasonable to the extent that it exceeded \$2 per net ton. Reparation awarded.

Jesse W. Lewis for complainant.

James H. Torrey for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the rolling of steel and the manufacture of shovels, scoops, spades, and handles at Wyoming, Pa., a point about 5 miles from Wilkes-Barre, Pa. By complaint, filed May 24, 1916, it alleges that the rate of 15 cents per 100 pounds charged by defendants for the transportation of three carloads of ash logs from Thurman, N. Y., to Wyoming, February 12, 16, and 17, 1915, was unreasonable to the extent that it exceeded the subsequently established rate of $10\frac{1}{2}$ cents, or to the extent that it exceeded the rate of 10 cents in effect at the time of movement from Warrensburg, N. Y., to which Thurman is intermediate. Reparation is asked. Rates are stated in amounts per net ton, except as otherwise noted.

The shipments aggregated 150,900 pounds and moved as routed by the shipper over the lines of the Delaware & Hudson Company and the Delaware, Lackawanna & Western Railroad, hereinafter called the Lackawanna route. Charges were ultimately collected in the sum of \$226.35, based on a rate of 15 cents per 100 pounds, legally applicable.

At the time of movement a rate of \$2 on logs in carloads was maintained from Thurman, applicable over the Delaware & Hudson to Wilkes-Barre and the Lehigh Valley Railroad beyond, hereinafter called the Lehigh Valley route. The same rate was in effect from Warrensburg, to which Thurman is intermediate, applicable over the Lackawanna route. These special commodity rates were published subject to rule 77 of Tariff Circular 18-A, under which the same rate could have been published from Thurman upon one day's notice to the public and to the Commission. The rates of \$2 from Thurman

and Warrensburg were increased to \$2.10, effective February 23, 1915, following *The Five Per Cent Case*, 32 I. C. C., 325. Effective March 26, 1915, at complainant's request, the carriers published the \$2.10 rate from Thurman applicable over the route of movement. The defendants admit that the failure to publish the same commodity rate from Thurman over the Lackawanna route as over the Lehigh Valley route was a mere inadvertence, which they corrected as soon as it came to their attention.

Complainant contends that the rate assailed was not only unreasonable, but was also in violation of the long-and-short-haul rule of the fourth section. The distance over the Lehigh Valley route is 262 miles; over the Lackawanna route, 251 miles. There are no traffic conditions which justify a difference in rates over the two routes. The Delaware & Hudson is the initial carrier and the haul is by two lines over either route. Thurman is intermediate and 4 miles nearer the destination point than is Warrensburg. Based on 50,300 pounds, the average weight of the shipments, the ton-mile and car-mile earnings at the rate of 15 cents per 100 pounds, were, respectively, 11.95 mills and 30 cents, and at the \$2 rate, 7.96 mills and 20 cents, respectively. Defendants expressed willingness on our special docket to award reparation on the basis of a rate of \$2, admitting that the rate assessed was unreasonable.

We find that the rate charged was unreasonable to the extent that it exceeded \$2 per net ton; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$75.45, with interest.

An order awarding reparation will be entered, but as the rate herein found reasonable, with the exception of the 5 per cent increase, has been in effect for more than two years, no order for the future is necessary.

No. 8988.

AUSTIN POWDER COMPANY

v.

WHEELING & LAKE ERIE RAILROAD COMPANY ET AL.

Submitted November 27, 1916. Decided June 9, 1917.

1. Charges on two carloads of black powder from Falls Junction, Ohio, to Mascoutah, Ill., found to have been illegal.
2. One carload found to have been misrouted by the Wheeling & Lake Erie Railroad Company.
3. Reparation awarded.

C. C. White for complainant.

C. E. Dempsey for Wheeling & Lake Erie Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing black powder, with its principal office at Cleveland, Ohio. By complaint, filed June 26, 1916, it alleges that, due to misrouting, the rate on two shipments of black powder from Falls Junction, Ohio, to Mascoutah, Ill., in August and November, 1912, was unreasonable and unjustly discriminatory. Reparation is asked. The claims were presented to the Commission informally February 7 and May 16, 1913. Rates are stated in cents per 100 pounds.

The shipments, each weighing 21,600 pounds, were delivered by complainant to the Wheeling & Lake Erie Railroad, consigned to Kolb Coal Company, Mascoutah. One was routed in the bill of lading "Cloverleaf c/o L. & N. via Belleville;" the other "L. E. & W. c/o L. & N. at Belleville, Ill." Both moved over the Wheeling & Lake Erie to Toledo, Ohio; Toledo, St. Louis & Western Railroad to East St. Louis, Ill.; Louisville & Nashville Railroad to destination. There was no joint through rate in effect, and charges were collected from the consignee in the sum of \$279.02. A combination rate of 62.7 cents was applicable, composed of a joint rate of 44½ cents to East St. Louis, Ill., and the first-class rate, governed by the Illinois classification, of 18.2 cents beyond. On that basis the charges should have been \$270.86, and the shipments were overcharged \$8.16. Complainant has received from the consignee an assignment of its interest in the recovery of reparation in this proceeding.

Falls Junction is near Cleveland, on the Wheeling & Lake Erie; Mascoutah, on the Louisville & Nashville, 24 miles from East St. Louis and 10 miles from Belleville. Belleville is between East St. Louis and Mascoutah. A joint rate of 44½ cents from Falls Junction to Belleville had applied in connection with the Louisville & Nashville, but was inadvertently canceled shortly before the shipments in issue moved. A joint rate of 45 cents was subsequently established over this route, effective January 11, 1914. When the shipments moved a joint rate of 45 cents applied to Belleville in connection with the Illinois Central Railroad. The rate from Belleville to Mascoutah was 13.2 cents. Complainant contends that both shipments should have been delivered to the Louisville & Nashville at Belleville. Defendant Wheeling & Lake Erie admitted at the hearing that it had misrouted one of the shipments, but, while it expressed willingness to make reparation as to both on the basis of the combination on Belleville, denied that the shipment routed "via Belleville" had been misrouted.

The shipment routed "Cloverleaf c/o L. & N. via Belleville" moved in accordance with complainant's instructions, which specified the carriers forming, in connection with the originating line, a complete through route by way of Belleville from point of origin to destination; and the initial carrier can not be charged with misrouting because it billed the shipment over that route instead of selecting a cheaper route in which those carriers participated, but with an additional carrier intervening. *Stebbins v. D., L. & W. R. R. Co.*, 42 I. C. C., 150. As to the shipment routed "L. E. & W. c/o L. & N. at Belleville, Ill.," the Wheeling & Lake Erie failed to move it over the cheapest available route consistent with the routing instructions, which could have been complied with by billing the shipment from the Wheeling & Lake Erie's junction with the Lake Erie & Western at Fremont, Ohio, over that carrier's line to a junction with the Illinois Central, thence by way of the Illinois Central to Belleville, and thence by way of the Louisville & Nashville to destination. Over this route the lower combination rate of 58.2 cents applied.

We find that the Wheeling & Lake Erie Railroad Company misrouted the shipment last above mentioned; that damages have resulted by the misrouting to the extent of the difference between the charges applicable over the route of movement and the charges that would have accrued at the rate of 58.2 cents per 100 pounds; and that complainant is entitled to reparation from the Wheeling & Lake Erie Railroad Company in the sum of \$9.72, with interest; also to reparation from all of the participating defendants in the sum of \$8.16, with interest, the amount of the overcharge above described.

An appropriate order will be entered.

No. 9026.

OTIS ELEVATOR COMPANY

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

Submitted November 21, 1916. Decided June 6, 1917.

Charges on two electric hoisting machines with motors, controllers, and parts, from Yonkers, N. Y., to Salt Lake City, Utah, found to have been in excess of the amount legally due. Reparation awarded.

W. J. L. Banham for complainant.

G. A. Ellis for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of passenger and freight elevators, with its principal office at New York, N. Y. By complaint, filed June 22, 1916, it alleges that the charges collected by defendants on two electric hoisting machines with motors, controllers, and parts, shipped November 7, 1914, from Yonkers, N. Y., to Salt Lake City, Utah, were unreasonable and unjustly discriminatory. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in amounts per 100 pounds.

The shipment, weighing 36,145 pounds, consisted of two complete electric hoisting machines with motors, controllers, sheave wheels, and other necessary parts for use in connection with the operation of passenger elevator cars. It was billed as a carload of machinery, knocked down, comprising 20 boxes, 11 pieces, and 4 iron wheels, and moved over the New York Central Railroad to Chicago, Ill.; Chicago, Burlington & Quincy Railroad to Council Bluffs, Iowa; Union Pacific and Oregon Short Line railroads to Salt Lake City. No joint rate applied, and charges were collected in the sum of \$524.10 at a combination rate of \$1.45, composed of a fifth-class rate of 30 cents, governed by the official classification, from Yonkers to Chicago, and a class A rate of \$1.15, governed by the western classification, applicable to freight or passenger elevator machines from Chicago to Salt Lake City.

Complainant contends that the charges should have been based on the fifth-class rate of 35 cents, governed by the official classification, from Yonkers to the Mississippi River, and a commodity rate of 97½ cents beyond, contemporaneously applicable to "machinery

(power), bridge building, mining, smelting, electrical and iron working (not including oil well or well boring machines), consisting of articles named in following list." The list referred to includes, among others, hoists, motors, controllers, and sheave wheels. Defendants insist that the commodity rate was intended to apply to electrical machinery that produces electricity, and not to machinery operated by electricity, and that the hoists mentioned in the list of articles taking the commodity rate were hoists used in bridge building, or in the operation of mines and smelters, and not hoists used in the operation of passenger elevators. If defendants intended to restrict the commodity rate to electrical machinery that generates electricity, it should have done so in clear and unequivocal terms. The commodity rate was not so restricted, nor were the hoists named in the list of articles taking the commodity rate limited to those used only in connection with bridge building and the operation of mines and smelters.

We find that the charges collected on the shipment were illegal to the extent they exceeded the charges that would have accrued at the fifth-class rate of 35 cents per 100 pounds from Yonkers to the Mississippi River and a commodity rate of $97\frac{1}{2}$ cents per 100 pounds from the Mississippi River to Salt Lake City; that complainant made the shipment as described and paid and bore the charges thereon, herein found to have been illegal; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the legal rates, and that it is entitled to reparation in the sum of \$45.18, with interest.

An appropriate order will be entered.

45 I. C. C.

No. 9067.

NEW YORK & NEW JERSEY PRODUCE COMPANY,
INCORPORATED,

v.

NEW YORK CENTRAL RAILROAD COMPANY.

Submitted January 18, 1917. Decided June 6, 1917.

Demurrage charges at Thirty-third street station, New York, N. Y., on certain carloads of potatoes shipped from various points in Michigan and Wisconsin, found to have been assessed in accordance with the tariff provision legally applicable. Complaint dismissed.

Arthur W. Rinke for complainant.

John M. Sternhagen for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the produce business at New York, N. Y. By complaint, filed July 15, 1916, it alleges that the demurrage charges collected by defendant at its Thirty-third street station, New York, on certain carloads of potatoes shipped from various points in Michigan and Wisconsin, during the period from December, 1915, to April, 1916, inclusive, were illegal and unreasonable. Reparation is asked.

Several team tracks at defendant's Thirty-third street station are set apart for the delivery of produce. Two of these tracks, with a combined capacity of 37 cars, are devoted exclusively to the delivery of potatoes, and will be referred to as potato team tracks. Immediately back of and paralleling one of the potato team tracks are several "back" tracks, used exclusively for holding loaded cars until ordered placed on the team tracks by consignees. These back tracks are so close together that it is impossible to unload cars standing thereon. The orders for moving cars from the back tracks and placing them on the potato team tracks are generally delivered between 4 p. m. and 5 p. m. and placement is effected before 7 a. m. the next day.

In October, 1912, complainant instructed defendant's agent at Thirty-third street to hold, subject to orders for placement on tracks designated for delivery of produce, all cars consigned to complainant and loaded with potatoes or other produce which should thereafter arrive at that station. Accordingly, during the period stated in the complaint, 14 refrigerator cars loaded with potatoes shipped from

various points in Michigan and Wisconsin, and billed to complainant at Thirty-third street, were placed upon the back tracks immediately upon their arrival, and remained there from 6 to 26 days, including Sundays and legal holidays, before complainant ordered them placed upon the potato team tracks. The cars were also held on the latter tracks from 1 to 7 days, including Sundays and legal holidays, before they were released by complainant. Demurrage charges were collected in accordance with defendant's following demurrage rule, applicable to refrigerator and other insulated cars:

When held for loading or unloading—for the first seventy-two hours (three days), \$1 per car per day or fraction of a day; for the succeeding seventy-two hours (three days), \$3 per car per day or fraction of a day; for each succeeding day or fraction thereof, \$5.

Complainant contends that during the time the cars were held upon the back tracks awaiting orders for placement upon the potato team tracks they were subject to demurrage charges under the following further rule of defendant's tariff:

When held for any other purpose—for the first seventy-two hours (three days); \$1 per car per day or fraction of a day; for each succeeding day or fraction thereof, \$3.

The reasonableness of the rule under which the charges were assessed is not the basis of the complaint; the legality of its application alone is questioned.

It is testified by defendant and admitted by complainant that the Thirty-third street station is purely a delivery station. The shipments were originally billed to that point, as their ultimate destination, for delivery and unloading. They were held on the back tracks solely in accordance with instructions from complainant, in the absence of which the cars would have been placed upon the potato team tracks within 12 hours after their arrival.

We find that the cars were held for unloading within the meaning of the rule first above quoted, and that the demurrage charges were assessed in accordance with the tariff provision legally applicable. An order dismissing the complaint will be entered.

No. 9099.

KIECKHEFER BOX COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted November 9, 1916. Decided June 6, 1917.

Charges on wood-pulp board packing cases, k. d., flat, in carloads, from Milwaukee, Wis., to Oregon, Ill., found to have been unreasonable. Reparation awarded.

P. J. Freeman for complainant.

Kenneth F. Burgess for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of packing boxes at Milwaukee, Wis. By complaint, filed August 9, 1916, it alleges that the charges collected by defendants for the transportation of nine carloads of wood-pulp board packing cases, k. d. flat, from Milwaukee to Oregon, Ill., during the period from August 29, 1914, to July 7, 1915, inclusive, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments consisted of wood-pulp board packing cases for use in packing condensed milk, of which six, aggregating 253,825 pounds, moved over the Chicago, Milwaukee & St. Paul and Elgin, Joliet & Eastern railways, and the Chicago, Burlington & Quincy Railroad; two, aggregating 89,920 pounds, over the Chicago, Milwaukee & St. Paul, and Chicago, Burlington & Quincy; and one, weighing 40,300 pounds, over the Chicago & North Western Railway, Elgin, Joliet & Eastern, and Chicago, Burlington & Quincy. Charges were collected thereon in the sum of \$532.08, at the sixth-class rate, governed by the Illinois classification, of 13.3 cents on two shipments, and 14 cents on the remainder. The increase of the sixth-class rate to 14 cents followed *The Five Per Cent Case*, 31 I. C. C., 351.

On July 26, 1915, a joint commodity rate of 7.4 cents was established on this traffic over the routes of movement from Milwaukee to Oregon, and this rate is still in effect. Complainant contends that the charges collected were unreasonable to the extent that they exceeded the charges which would have accrued at the present rate.

Prior to November, 1914, defendants maintained a rate of 7 cents, minimum 35,000 pounds, on wood-pulp board boxes, k. d. flat, in
45 I. C. C.

carloads, from Milwaukee to Sterling, Rock Falls, and Rockford, points in northern Illinois adjacent to Oregon. Each of the shipments weighed in excess of 35,000 pounds. Following *The Five Per Cent Case, supra*, this rate was increased to 7.4 cents, effective November 16, 1914. The short-line distance from Milwaukee to Oregon is 134 miles. Based on 42,671 pounds, the average weight of the shipments, the 14-cent rate yielded 44.6 cents per car-mile by way of the short line; the 7.4-cent rate yields approximately 23.6 cents per car-mile over the same route.

The Chicago, Burlington & Quincy, the only defendant represented at the hearing, stated that Oregon generally takes from Milwaukee the same commodity rates as Rockford and Sterling; and that the rate on pulpboard packing cases from Milwaukee to Oregon was reduced to the level of the rates from Milwaukee to Rockford and Sterling when the matter was brought to its attention.

We find that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 7.4 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation. An order will be entered against the Chicago, Milwaukee & St. Paul Railway Company, Elgin, Joliet & Eastern Railway Company, and Chicago, Burlington & Quincy Railroad Company, for the payment of \$164.75, with interest; against the Chicago, Milwaukee & St. Paul Railway Company and Chicago, Burlington & Quincy Railroad Company for the payment of \$59.35, with interest; and against the Chicago & North Western Railway Company, Elgin, Joliet & Eastern Railway Company, and Chicago, Burlington & Quincy Railroad Company for the payment of \$23.78, with interest.

As the rate herein found to have been reasonable has been in effect for more than a year, no order for the future is necessary.

45 I. C. C.

No. 9106.

G. A. DE WILDE & SONS

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted November 6, 1916. Decided June 9, 1917.

Rates on wine in carloads from New Orleans, La., to Sheboygan, Wis., found to have been unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and from Milwaukee, Wis. Reparation awarded.

David Harlowe for complainants.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Gustav A. De Wilde, sr., Gustav A. De Wilde, jr., and Edward C. De Wilde, copartners, engaged in the wine and liquor business at Sheboygan, Wis., under the firm name of G. A. De Wilde & Sons. By complaint, filed August 21, 1916, they allege that the rates assessed by defendants on two carloads of wine, shipped June 4, 1915, from New Orleans, La., to Sheboygan, were unreasonable and unjustly discriminatory in that they exceeded the aggregate of the intermediate rates to and from Milwaukee, Wis. Reparation is asked. Rates are stated in amounts per 100 pounds, except as otherwise noted.

The shipments, which originated in Germany, consisted of 486 cases of wine, in bottles, weighing 51,109 pounds, and 23 casks of wine, weighing 19,268 pounds. They were delivered to defendants at New Orleans under one bill of lading and moved over the Texas & Pacific Railway; St. Louis, Iron Mountain & Southern Railway; Chicago & Alton Railroad; and Chicago & North Western Railway. Charges were collected in the sum of \$796.36, based on the joint first-class rate of \$1.20 on the cases, and the joint second-class rate of 95 cents on the casks, both governed by the western classification. At the time of movement there were in effect over the route of movement combination rates, based on Milwaukee, of 65.5 cents on wine, in cases, and 61.5 cents in casks, composed of an import third-class rate of 40.5 cents, minimum 30,000 pounds, applicable, under rule 10 of the official classification, to mixed carloads of wine, in cases and

in casks, from New Orleans to Milwaukee, and the first-class rate of 25 cents on wine in cases, and the second-class rate of 21 cents on wine in casks, from Milwaukee to destination, governed by the western classification. Effective March 20, 1916, defendants published a joint domestic commodity rate of 53 cents, minimum 24,000 pounds, applicable over the route of movement, on wine in boxes and casks, of value not exceeding \$2.50 per gallon. Effective December 15, 1916, defendants established import commodity rates of 65.5 cents on wine in cases, and 49.8 cents on wine in barrels, minimum 30,000 pounds, governed by official classification. Under rule 10 of the classification the 65.5-cent rate would apply to mixed carload shipments. These rates, which are still in effect, correct the former departure from the fourth section, which was protected by an appropriate application. The wine was valued at 75 cents per gallon. Complainants asked at the hearing that reparation be awarded on basis of the 53-cent rate. However, the allegation in the complaint that the charges collected were unreasonable and unjustly discriminatory rests exclusively upon the departure from the fourth section.

We find that the rates charged were unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and from Milwaukee; that complainants made the shipments as described and paid and bore the charges thereon at the rates herein found to have been unreasonable; that they have been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rates herein found reasonable; and that they are entitled to reparation in the sum of \$343.10, with interest.

An appropriate order will be entered.

45 I. C. C.

No. 9118.

SUNDERLAND BROTHERS COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Submitted November 17, 1916. Decided June 9, 1917.

Following *Reeves Coal Co. v. C., M. & St. P. Ry. Co.*, 37 I. C. C., 707, defendant's failure properly to advise complainant as to the route traversed by a carload of coal from Christopher, Ill., to Purdin, Mo., and defendant's subsequent failure strictly to observe the terms of complainant's reconsigning order; *Held*, Not to be a violation of the act to regulate commerce. Complaint dismissed.

H. S. Colvin for complainant.

F. Montmorency for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling fuel and building material at Omaha, Nebr. By complaint, filed August 10, 1916, it alleges that the charges collected by defendant on a carload of coal, shipped July 30, 1914, from Christopher, Ill., to Purdin, Mo., reconsigned to Linneus, Mo., were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked.

The shipment, weighing 73,000 pounds, was delivered to defendant unrouted, consigned to complainant at Purdin, and moved to destination through Linneus. There was another available route over defendant's line through Milan, Mo., over which route the rate on coal from Christopher to Purdin was the same as over the route of movement. Over this route Purdin is intermediate to Linneus. Complainant's customer at Purdin refused to accept the shipment, and on August 7, 1914, four days after its arrival, defendant's agent at Omaha requested complainant to furnish disposition orders. Acting on the assumption that the shipment had moved through Milan, complainant, on August 8, 1914, directed that it be reconsigned to Linneus on basis of the through rate from Christopher. A rate of \$2.05 per net ton applied on this traffic from Christopher to both Purdin and Linneus. Defendant's tariffs did not and do not authorize reconsignment at the through rate where a back haul is involved, and defendant's agent advised complainant on August 11 that the reconsignment requested could not be effected. Complainant's witness testified that upon receipt of this advice from defendant a representative of complainant inquired of defendant's

agent at Laclede, Mo., a junction immediately south of Linneus and Purdin, concerning the route of movement, and was informed that the car had not moved northbound through that point; and that the same inquiry was made of defendant's agent at Purdin, who advised that the car had moved through Milan and could be reconsigned to Linneus on basis of the published through rate. On August 12, 1914, complainant instructed defendant's agent at Purdin to reconsign the shipment to Linneus at the through rate of \$2.05 per net ton. Thereupon defendant forwarded the shipment and made delivery at Linneus, August 13, 1914. Charges were collected in the sum of \$93.77, at the through rate of \$2.05 per net ton from Christopher to Purdin, plus the local interstate rate of 30 cents per net ton for the back haul to Linneus, and a demurrage charge of \$8. Defendant concedes that \$2 excess demurrage was collected and expresses willingness to make refund in that amount.

Defendant's witness stated that no record is kept at Laclede of cars moving north to Purdin and submitted in evidence a statement from its car accountant showing that the shipment in controversy actually moved through Laclede and Linneus. Complainant does not deny that the shipment originally moved through Laclede and that the movement from Purdin to Linneus was a back haul. Its contention is that defendant should have requested further instructions in accordance with the provisions of the reconsigning order. Whether the movement be considered one which was authorized by complainant upon erroneous information or as one unauthorized by the terms of the reconsigning order, still delivery of the shipment was accepted at Linneus, and there can be no departure from the established rate for that service. *Reeves Coal Co. v. C., M. & St. P. Ry., Co.*, 37 I. C. C., 707. No complaint is made as to the reasonableness *per se* of the rate charged.

Reparation is awardable only for violations of the act, and we find that no provision of the act is shown to have been violated. The complaint therefore will be dismissed. The overcharge described should be promptly refunded.

An appropriate order will be entered.

No. 9262.

CLINTON SUGAR REFINING COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

Submitted January 10, 1917. Decided June 12, 1917.

Charges on corn in carloads from points in Illinois, milled into gluten feed at Clinton, Iowa, and the product forwarded to certain interstate destinations, found to have been unreasonable. Reparation awarded.

J. A. O'Halloran for complainant.

George H. Crosby for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of corn products at Clinton, Iowa. By complaint, filed August 10, 1916, it alleges that the charges collected by defendants for the transportation of certain carloads of corn, shipped during the period from January 5, 1912, to March 22, 1913, inclusive, from points in Illinois, milled at Clinton into gluten feed, and the product forwarded to various interstate points, were unreasonable. Reparation is asked. Claim covering apparently all of the shipments was presented to the Commission informally within the statutory period.

Prior to August 31, 1911, the joint rates on the product of corn applied on corn milled in transit at Clinton from points of origin of the corn to final destinations, plus one-half cent per 100 pounds on the weight of the product, under rules published in a tariff of the Chicago, Burlington & Quincy Railroad, hereinafter called defendant. On the date above mentioned the transit arrangement was canceled. On January 5, 1912, the transit service was reestablished at Clinton, but through inadvertence was not restored on shipments destined beyond certain junctions between defendant's and connecting carrier's lines. That arrangement was in effect at the time these shipments moved, and each of them passed through a point designated in the transit tariff. Charges were collected upon the basis of the rates applicable on corn to Clinton and on the product thence to destination. On March 22, 1913, the transit service in effect prior to August 31, 1911, was restored.

Complainant contended that the through rates were legally applicable under the tariffs in effect at time of movement, but it is clear that the transit tariff did not authorize the application of the through rates on these shipments. It further contends that the charges collected were unreasonable to the extent that they exceeded those that would have accrued had the milling-in-transit arrangement been in effect at the time of movement. Defendant expressed a willingness to make reparation.

We find that to the extent that the charges collected on the shipments exceeded those that would have accrued at the joint through rates on gluten feed contemporaneously in effect from the points of origin of the corn to the destination points, plus one-half cent per 100 pounds on the weight of the gluten feed they have not been justified; that complainant made the shipments as described in the complaint and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the joint through rates in effect at the time the shipments moved, plus one-half cent per 100 pounds on the weight of the product; and that it is entitled to reparation, with interest, on shipments not barred by the statute of limitations. The amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments, which are not barred by the statute of limitations in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

45 I. C. C.

No. 9142.

UNION PETROLEUM COMPANY

v.

TRINITY & BRAZOS VALLEY RAILWAY COMPANY ET AL.

Submitted April 20, 1917. Decided June 12, 1917.

Rate on gasoline in carloads from Corsicana, Tex., to Gillett, Wis., found to have been unreasonable. Reparation awarded.

A. Stoll for complainant.

Theodore Hansen for Chicago, Rock Island & Pacific Railway Company and its receiver.

C. B. Ackerman for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in petroleum products at Philadelphia, Pa. By complaint, filed August 31, 1916, it alleges that the rate of 94 cents per 100 pounds charged by defendants on a carload of gasoline, shipped in October, 1915, from Corsicana, Tex., to Gillett, Wis., was unreasonable to the extent that it exceeded $47\frac{1}{2}$ cents per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment was originally billed to South Chicago, Ill., and was reconsigned in transit to Gillett. It weighed 52,741 pounds, and moved by way of the Trinity & Brazos Valley Railway, Houston & Texas Railroad, Chicago, Rock Island & Gulf, and Chicago, Rock Island & Pacific railways to Des Moines, Iowa, and the Chicago & North Western Railway thence to Gillett by way of Chicago, Ill. Freight charges were properly collected in the sum of \$495.77 at the joint fifth-class rate of 94 cents. In the absence of the joint rate a combination rate of $47\frac{1}{2}$ cents, composed of a commodity rate of 35 cents to Chicago and a rate of $12\frac{1}{2}$ cents beyond, would have applied. On June 15, 1916, defendants canceled the application of the joint fifth-class rate on gasoline from Corsicana to Gillett, since which time a combination rate of $47\frac{1}{2}$ cents has applied. The former departure from the rule of the fourth section was protected by an appropriate fourth section application.

A representative of the Chicago & North Western, who was the only witness for defendants, testified that the rate charged was un-

reasonable and that his company was willing to join with the other defendants in making reparation on basis of the 47½-cent rate.

We find that the rate charged was unreasonable to the extent that it exceeded 47½ cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$245.25, with interest.

An order awarding reparation will be entered, but as the rate herein found reasonable has been in effect since June 15, 1916, no order for the future is necessary.

No. 9105.

WOODBURY GRANITE COMPANY

v.

ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD COMPANY
ET AL.

Submitted December 4, 1916. Decided June 6, 1917.

Charges on building granite in carloads from Hardwick, Vt., to Warren, Ohio, found to have been illegal. Reparation awarded.

W. A. Dutton for complainant.

G. H. Eaton for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in quarrying and finishing building and monumental granite, with its principal office at Hardwick, Vt. By complaint, filed August 21, 1916, it alleges that the charges collected by defendants on 14 carloads of building granite, shipped from Hardwick to Warren, Ohio, during the period from February 17, 1915, to March 20, 1915, inclusive, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments, aggregating 592,280 pounds, moved over the St. Johnsbury & Lake Champlain Railroad to St. Johnsbury, Vt.; Boston & Maine Railroad to Mechanicville, N. Y.; Delaware & Hudson Company to Binghamton, N. Y.; Erie Railroad to Warren.

Charges were collected thereon in the sum of \$1,315.49 at the joint fifth-class rate of 21 cents, minimum 36,000 pounds, on three shipments, and 22.4 cents, minimum 36,000 pounds, on the remainder. Complainant contends that the rates charged were unreasonable to the extent that they exceeded 15 cents.

On October 15, 1913, defendants published a commodity rate of 15 cents, minimum 30,000 pounds, on building granite from Hardwick to Warren. As a result of the readjustment of rates following *Nebraska State Railway Commission v. C. V. Ry. Co.*, 32 I. C. C., 41, in which we held that it was unjustly discriminatory for the carriers to maintain rates on monumental granite higher than the rates contemporaneously maintained on building granite from producing points in New England to Mississippi River crossings, defendants attempted to increase the rates on building granite to the fifth-class basis which applied on monumental granite. These proposed increased rates were to become effective December 31, 1914, but were suspended by the Commission until March 31, 1915. The shipments in controversy moved during the period the class basis was under suspension, and the rate legally applicable was the commodity rate of 15 cents, so that the shipments were overcharged \$427.07.

We find that the charges collected were illegal to the extent that they exceeded the charges that would have accrued at the rate of 15 cents per 100 pounds, minimum 30,000 pounds, which rate we find was legally applicable. We further find that complainant made the shipments as described and paid and bore the charges thereon, herein found to have been illegal; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate legally applicable; and that it is entitled to reparation in the sum of \$427.07, with interest.

An appropriate order will be entered.

45 I. C. C.

No. 9209.

WAVERLY OIL WORKS COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY.

Submitted September 27, 1916. Decided June 6, 1917.

Claim for reparation on petroleum, carloads, from Pittsburgh, Pa., to Homestead, Pa., destined to New York, N. Y., for export, denied. Complaint dismissed.

C. D. Chamberlin for complainant.

Henry Wolf Bikelé for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and refining of petroleum, with its principal place of business at Pittsburgh, Pa. By complaint, filed September 27, 1916, it alleges that the charges collected by defendant for the transportation in April, 1916, from Pittsburgh to Homestead, Pa., of 10 carloads of petroleum destined to New York, N. Y., for export, were unreasonable and unjustly discriminatory. Reparation is asked and the establishment of a reasonable rate for the future.

The facts were stipulated. Owing to an embargo the shipments in question, which originated at Pittsburgh, could not move over defendant's rails direct to New York for export. They were, therefore, consigned by complainant to the agent of the Pittsburgh & Lake Erie Railroad Company at Homestead, the bills of lading being transmitted to that official with instructions to forward shipments to New York for export. The shipments accordingly moved by way of the Pennsylvania Railroad to Homestead. Charges were collected by defendant for the haul from Pittsburgh to Homestead in the sum of \$117.03 at its local rate of 4.2 cents per 100 pounds applicable on interstate traffic. An intrastate rate of 32 cents per net ton was contemporaneously maintained by defendant from and to these points. After the shipments moved, complainant sought to have new bills of lading issued, consigning the shipments to itself at Homestead, apparently for the purpose of having them rebilled, and by this device to obtain the lower intrastate rate to Homestead. But complainant could not, by rebilling the shipments at Homestead, have rendered the intrastate rate applicable thereto.

Complainant does not attack the through rate from Pittsburgh to New York, and the route of movement from Homestead to New York is not disclosed.

In the absence of any showing that the through rate from Pittsburgh to New York was unreasonable the complaint must be dismissed, and an order will be entered accordingly.

No. 8816.

JOHN C. BURNS ET AL.

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted September 13, 1916. Decided June 12, 1917.

Rate on bananas in carloads from New Orleans, La., to La Crosse, Wis., not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

S. J. Bolton and W. W. West for complainants.

Edward H. Hart and R. Walton Moore for Illinois Central Railroad Company.

J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

R. H. Widdicombe for Chicago & North Western Railway Company.

Kenneth F. Burgess for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants, an individual and a corporation, are wholesale fruit dealers at La Crosse, Wis. By complaint, filed April 17, 1916, they allege that the rate of 70 cents per 100 pounds on bananas, in carloads, from New Orleans, La., to La Crosse, is unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeds 62 cents per 100 pounds. The establishment of a reasonable rate for the future is asked. Rates are stated in cents per 100 pounds.

La Crosse is on the east bank of the Mississippi River, 113 miles north of Dubuque, Iowa, and 132 miles south of St. Paul, Minn. Banana shipments from New Orleans to La Crosse move principally 45 I. C. C.

over the Illinois Central Railroad to Dubuque, and the Chicago, Milwaukee & St. Paul Railway beyond, or over the Illinois Central to East Dubuque, Ill., and the Chicago, Burlington & Quincy Railroad beyond.

In support of the allegation of unreasonableness, complainants cite, by way of comparison, rates on bananas, in carloads, from New Orleans to various destinations, of which the following are illustrative:

	Distance.	Rate.	Revenue per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
St. Louis, Mo.....	696	45	1.293
Hannibal, Mo.....	816	50	1.225
Fort Madison, Iowa.....	899	54	1.201
Dubuque, Iowa.....	1,002	58	1.157
Milwaukee, Wis.....	995	52	1.045
Madison, Wis.....	996	52	1.044
Mason City, Iowa.....	1,136	68	1.197
La Crosse.....	1,115	70	1.255

¹ Since the hearing the rate to Madison has been increased to 60 cents, which yields ton-mile earnings of 1.205 cents.

Defendants explained that the 68-cent rate to Mason City is out of line and should be increased to 70 cents.

The gradual increase in the rates along the Mississippi River in a northerly direction, ranging from 45 cents at St. Louis to 58 cents at Dubuque, a spread of 13 cents for 306 miles, is contrasted by complainants with the spread of 12 cents between the 58-cent rate to Dubuque and the 70-cent rate to La Crosse for 113 miles. Complainants also observe that the rate to La Crosse yields a greater ton-mile revenue than the rates to points less distant.

In jobbing bananas to points surrounding La Crosse complainants come in direct competition with dealers at Madison and Dubuque, and, to a less extent, with dealers at Milwaukee. It is urged that the maintenance of the lower rates to points from which competition is encountered restricts the complainants' markets and compels either a shrinkage of profits or abandonment of competitive trade territory.

For rate-making purposes La Crosse on all traffic from New Orleans has long been and still is included in the so-called St. Paul group, which embraces portions of Wisconsin, Minnesota, and Iowa. Defendants claim that a reduction in the rate to La Crosse would be followed by demands for similar reductions from other points in the group, and that the disruption of the group would result. The rate relation shown in the preceding table has been maintained for a number of years with practically no change. Aside from an increase of 2 cents to Mason City and La Crosse in 1914, and to all of

the other points shown in 1915, there has been no substantial change in the rates themselves.

Defendants cited a number of markets in the St. Paul group to which the average distance from New Orleans is greater than to La Crosse, although the rates are the same. They also called attention to *Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co.*, 13 I. C. C., 620, and *Rates on Bananas from Gulf Ports*, 30 I. C. C., 510, where we approved rates on bananas from New Orleans to Kansas City, Mo., and Topeka, Kans., of 63 cents and 71 cents, respectively, yielding for 879 miles and 947 miles, ton-mile revenue of 1.434 cents and 1.5 cents. These rates, which were subsequently increased 2 cents, are relatively higher than the rate here assailed. The expense attending the transportation of bananas from New Orleans has been fully discussed in other cases and need not be detailed here. The rates on bananas, in carloads, imported through the port of Baltimore, Md., are 43.2 cents to Milwaukee, 52.4 cents to Dubuque, and 75.5 cents to La Crosse. Defendants state that, while they do not actually meet the rates from Baltimore, in making rates from New Orleans to Milwaukee and Dubuque, such rates are depressed by the rates from the east, which do not affect the rates to La Crosse. The rate on bananas, in carloads, from Baltimore to Madison is 65.2 cents. Madison is not in the St. Paul group. Prior to the hearing, defendants had determined that the former rate of 52 cents from New Orleans to Madison was unduly low, and, effective August 15, 1916, increased it to 60 cents, 10 cents less than the rate to La Crosse. The rates on sugar, coffee, molasses, and rice from New Orleans to Madison ranged from 25 to 37 cents per 100 pounds; to La Crosse from 5 to 7 cents greater.

We find that the rate assailed is not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial, and an order dismissing the complaint will be entered.

No. 9072.

BEST-CLYMER MANUFACTURING COMPANY

v.

ARKANSAS CENTRAL RAILROAD COMPANY ET AL.

Submitted December 11, 1916. Decided June 12, 1917.

Charges on sorghum cane in carloads from Sallisaw, Okla., to South Fort Smith, Ark., found unreasonable. Reparation awarded.

C. D. Mowen for complainant.

J. M. Souby for Kansas City Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of sirup from sorghum cane at South Fort Smith, Ark. By complaint, filed July 15, 1916, it alleges that the charges collected by defendants for the transportation of 18 carloads of sorghum cane from Sallisaw, Okla., to South Fort Smith, during the period from October 17, 1914, to November 14, 1914, inclusive, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments, aggregating 872,085 pounds, moved over the Kansas City Southern Railway to Fort Smith, Ark., and the Arkansas Central Railroad beyond, a total distance of 42 miles. Charges were collected in the sum of \$872.09 at the class B rate of 10 cents, minimum 36,000 pounds, governed by the western classification. On November 15, 1914, subsequently to the movement of the shipments, a rate of 2 cents, minimum 40,000 pounds, was established on sorghum cane over the route of movement, but was restricted to shipments the products of which moved out of South Fort Smith over the Arkansas Central and the Kansas City Southern. The products of the shipments in issue so moved. At the time of movement the 2-cent rate applied on this commodity from and to the points involved by way of the St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain, and the Arkansas Central, a distance of 32 miles. This rate was also restricted to shipments the products of which moved out of South Fort Smith over the Arkansas Central and the Iron Mountain.

Complainant contends that the rate charged was unreasonable to the extent that it exceeded 2 cents, minimum 40,000 pounds. Defendants admit that the rate charged was unreasonable and express willingness to make reparation on basis of the 2-cent rate.

The 10-cent rate charged yielded an average of \$48.45 per car, \$1.15 per car-mile, and 4.84 cents per ton-mile.

We find that the charges collected on the shipments in issue were unreasonable to the extent that they exceeded the charges that would have accrued on basis of a rate of 2 cents per 100 pounds, minimum 40,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$697.47, with interest.

An order awarding reparation will be entered, but as the rate herein found reasonable has been in effect for more than two years, no order for the future is necessary.

No. 8990.

A. W. MILLER SAW MILL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted January 11, 1917. Decided June 12, 1917.

Upon complaint alleging that unreasonable charges were assessed on lumber in carloads from Maytown, Wash., to Rocky Ford, Colo., by reason of the fact that a larger car than that ordered was furnished, for carriers' convenience, *Held*, That car furnished was in reasonable compliance with shipper's orders and complaint dismissed.

Baxter & Jones for complainant.

O. P. Kellogg for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Seattle, Wash. By complaint, filed June 24, 1916, it alleges that defendants' charges on a carload of lumber shipped September 24, 1914, from the spur track of the Beaver Creek Lumber Company near Maytown, Wash., to Rocky Ford, Colo., assessed on basis of a minimum carload weight of 57,000 pounds, were unreasonable to the extent

that they exceeded the charges that would have accrued based on a minimum carload weight of 47,500 pounds. Reparation is asked.

The shipment, the actual weight of which appears to have been between 37,000 and 38,000 pounds, moved over defendants' lines in a 60,000-pound capacity gondola car. This car was furnished upon an order made out on one of the regular "application for cars" blanks furnished by the defendant Chicago, Milwaukee & St. Paul Railway. On the order opposite the item "kind," the shipper's agent specified "any." Across the face of the order appears the following: "This to be a very small car." The tariffs contain the usual rule to the effect that when carriers furnish, for their own convenience, a larger car than that ordered by the shippers, the car furnished may be used on basis of the minimum applicable to the car ordered. The tariffs also provide that:

Lumber and timbers * * * on open cars of greater marked capacity than 60,000 pounds, minimum weight will be 60,000 pounds; on cars of 60,000 pounds or less marked capacity, minimum weight will be 5 per cent less than marked capacity * * * .

Carriers will not undertake to furnish open cars having a capacity of 40,000 pounds or less; such cars will be furnished at their convenience, but when they are so furnished the shipments loaded therein will be subject to the minimum weights as stated above.

The equipment register shows that the Chicago, Milwaukee & St. Paul had no open cars between 40,000 and 50,000 pounds capacity.

Complainant contends that the order properly should have been construed as requesting a 50,000-pound car, and that a 60,000-pound car was furnished for the carrier's convenience. Neither the rate charged nor the provisions with respect to carload minimum are attacked.

Defendants state that when this car was ordered there were open cars available in their yards at Maytown of 60,000-pound, 80,000-pound, and 100,000-pound capacity, and that therefore a 60,000-pound capacity car was furnished.

We find that the car furnished was in reasonable compliance with the indefinite terms of the order, and the complaint must therefore be dismissed.

An appropriate order will be entered.

No. 8784.

MORRIS & COMPANY

v.

INTERNATIONAL & GREAT NORTHERN RAILWAY
COMPANY ET AL.

Submitted July 14, 1916. Decided June 12, 1917.

Rate on ice used to preserve in transit a carload of lard from Kansas City, Mo., to Saltillo, Mex., found to have been unreasonable. Reparation awarded.

W. E. McLaughlin for complainant.

R. C. Trovillion for Missouri, Kansas & Texas Railway Company; Missouri, Kansas & Texas Railway Company of Texas; and International & Great Northern Railway Company and their receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation operating a packing house at Kansas City, Mo. By complaint, filed March 24, 1916, as amended, it alleges that the rate charged by defendants for the transportation of 6,000 pounds of refrigerating ice contained in a car loaded with lard which moved from Kansas City to Saltillo, Mex., in February, 1912, was unreasonable to the extent that it exceeded the Mexican lines' proportion of the through rate applicable to the contents of the car. Reparation is asked only to the extent of the alleged unreasonable charges collected for the transportation of the ice in the United States. The claim was presented to the Commission informally July 18, 1913. Rates are stated in amounts per 100 pounds.

The shipment moved over the Missouri, Kansas & Texas Railway; Missouri, Kansas & Texas Railway of Texas; and International & Great Northern Railway to Laredo, Tex., and the National Railways of Mexico beyond. The bunkers of the car contained 6,000 pounds of crushed and salted ice intended to refrigerate and preserve the lard. No ice was removed at destination by the consignee. A joint commodity rate of \$1.10 applied on the lard and, under the following provision of defendants' tariff, charges on the ice were collected in the sum of \$66:

On Mexican traffic, ice furnished by shippers for preservation of freight in carloads, loaded in refrigerator cars, will not be carried free, but the total weight of the ice

shipped as preservative will be charged for on basis of the carload rate applying on the commodity contained in the car.

Complainant observes that another provision of defendants' tariff relating to ice used to preserve lard and other packing-house products in transit provided, in part, as follows:

It being understood that when freight, beer excepted, is moved under refrigeration and charges assessed in accordance with the schedule provided in this item, that freight earnings will only be assessed on the actual weight of the freight moved, subject to the minimum weight, unless consignees take charge of and remove at destination any ice that may remain in the car, in which case charges shall be assessed on the weight of the ice at carload rate applicable upon contents of the car.

and insists that as no ice was removed at destination the charges attacked were inapplicable. It appears, however, that the tariff containing this provision restricted its application to shipments destined to points in Texas and Louisiana. The charges assailed were therefore legally applicable.

The joint rate of \$1.10 applied was based on a rate of 71 cents from Kansas City to Laredo and a rate of 39 cents beyond. The joint rate charged on the ice exceeded the aggregate of the intermediate rates, as no charge was imposed for ice on local shipments from Kansas City to Laredo when not removed from the car. Effective August 11, 1912, subsequently to the time this shipment moved, the defendants' tariff provided that on Mexican traffic ice furnished by shippers to preserve freight in carloads when destined to Saltillo would be transported free to the Mexican border and a charge of 20 cents assessed thereon from Laredo to Saltillo. This provision remained in effect until November 30, 1914, when it was canceled owing to the fact that joint through rates from points in the United States to points in Mexico had also been canceled.

In *Swift & Co. v. M. P. Ry. Co.*, Docket No. 6739, unreported, we found that the rates charged on ice bunkered in cars containing lard and other packing-house products from Kansas City to points in Mexico on the basis of the through rates applicable to the contents of the car were unreasonable to the extent that they exceeded one-half of the Mexican lines' proportion of the through rates applicable to the contents of the cars. Complainant herein explained that reparation is asked only on the basis of the charges paid in excess of the full proportion of the Mexican lines' divisions, owing to the fact that, because of the present conditions in Mexico, the American lines would be unable to collect from their Mexican connections any portion of the charges paid.

We find that the rate charged on the ice bunkered in the car was unreasonable to the extent that it exceeded 39 cents per 100 pounds, the factor of the rate applicable beyond Laredo. We further find

that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued on basis of the rate herein found reasonable; and that it is entitled to reparation from the International & Great Northern Railway Company and its receivers; Missouri, Kansas & Texas Railway Company and its receiver; and the Missouri, Kansas & Texas Railway Company of Texas and its receiver, in the sum of \$42.60, with interest.

An order awarding reparation will be entered.

No. 8886.

WALTER A. ZELNICKER SUPPLY COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted September 7, 1916. Decided June 12, 1917.

Rate on new steel rails in carloads from East St. Louis, Ill., to Manitowoc, Wis., not shown to have been or to be unreasonable. Complaint dismissed.

John D. Fidler for complainant.

Fred H. Behring for Southern Railway Company and Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in railway supplies and equipment at St. Louis, Mo. By complaint, filed May 20, 1916, it alleges that the rate of \$3.35 per long ton charged on a carload of steel rails shipped June 23, 1914, from East St. Louis, Ill., to Manitowoc, Wis., was unreasonable to the extent that it exceeded \$1.95. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in amounts per long ton.

The shipment consisted of 59,560 pounds of new steel rails and moved over defendants' lines in accordance with complainant's routing instructions. There was no joint rate applicable, and charges were assessed in the sum of \$89.07 at the legally applicable combination rate of \$3.35, composed of commodity rates of \$1.60 to Chicago and

\$1.75 beyond. The distance over the route of movement is 669 miles. The short-line distance is over the Chicago & Alton Railroad to Chicago and the Chicago & North Western Railway beyond, 443 miles. The distances over other direct lines to Chicago and the Chicago & North Western beyond range from 445 to 507 miles.

At the time of movement there were applicable from East St. Louis to Manitowoc over the direct routes joint rates on new steel rails of \$1.95. The rates on classes and commodities generally, including rails, from East St. Louis to Chicago over the route this shipment moved were and are the same as over the direct routes, and are lower than the rates from intermediate points. These departures from the provisions of the fourth section are covered by an appropriate application. Complainant contends that the rate to Manitowoc over the route of movement should not exceed the rates over the direct routes.

The rate charged and the rate sought over the route of movement yielded and yield 4.47 mills and 2.6 mills per net ton per mile, respectively; for the short-line distance of 443 miles the \$1.95 rate yields 3.93 mills.

Defendant Southern Railway expressed willingness to make reparation on basis of the \$1.95 rate and to establish that rate over the route of movement for the future, but on account of the circuitousness of that route and the existence of competitive conditions at East St. Louis which do not exist at intermediate points it is unwilling to apply the \$1.95 rate from such intermediate points.

We find that the rate assailed is not shown to have been or to be unreasonable, and an order dismissing the complaint will be entered.

No. 8339.

WEST COAST LUMBER MANUFACTURERS' ASSOCIATION
ET AL.

v.

TACOMA EASTERN RAILROAD COMPANY ET AL.

Submitted January 27, 1916. Decided June 20, 1917.

On complaint of failure and refusal of defendants to reestablish through routes and joint rates between points on the Tacoma Eastern Railroad and points east of the Missouri River by way of the Northern Pacific Railway and its connections; *Held*, That the existing through route over the Chicago, Milwaukee & St. Paul Railway and its connections to the territory of destination has not been shown to be unreasonably long or inadequate. Complaint dismissed.

Joseph N. Teal and William C. McCulloch for complainants.

F. M. Barkwill and F. M. Dudley for Tacoma Eastern Railroad Company and Chicago, Milwaukee & St. Paul Railway Company.

H. E. Still for Northern Pacific Railway Company

REPORT OF THE COMMISSION.

HALL, *Chairman*:

The complaint in this proceeding is filed by and on behalf of various individuals, partnerships, and corporations, manufacturing forest products in the state of Washington, to procure the reestablishment of through routes and joint rates on lumber and forest products from certain stations on the Tacoma Eastern Railroad, by way of Tacoma, Wash., and the Northern Pacific Railway and its connections, to points east of the Missouri River.

The Tacoma Eastern extends southeasterly for a distance of about 67 miles from Tacoma into the Cascade Range and is a subsidiary of the Chicago, Milwaukee & St. Paul Railway, hereinafter termed the Milwaukee. In 1901 through routes and joint rates on lumber and forest products were established by the Tacoma Eastern, then independent, and the Northern Pacific Railway Company, hereinafter termed the Northern Pacific, from originating points on the former to destinations on the latter and its connections. At that time the Northern Pacific was the only line reaching Tacoma. Subsequently the Milwaukee, then known as the Chicago, Milwaukee & Puget Sound Railway Company, extended its rails to that point. In May, 1909, it acquired the Tacoma Eastern and thereafter published through rates via its line. *Rates on Lumber and Other Forest*

Products, 21 I. C. C., 455. In August, 1914, the Milwaukee filed tariffs canceling the joint rates from points on the Tacoma Eastern to points east of the Missouri River applicable by way of the Northern Pacific and its connections, leaving available to such points only one through route, that over its own line, via which the rates are the same as had formerly obtained over the Northern Pacific route. Joint rates to local points on the Northern Pacific were not canceled.

Complainants urge that the elimination of the Northern Pacific route has prevented and will prevent complainants from competing for business in eastern markets wherever routing over the Northern Pacific is specified and required by prospective purchasers, for the reason that shipments can not be routed via the Northern Pacific except at combination rates which are unreasonable and unduly prejudicial; that with only one route available competition, formerly an incentive to efficient transportation service, has been removed; that in case of car shortage the supply available over the remaining route to which complainants are now restricted might be inadequate for expeditious movement of the traffic; that the cancellation has deprived complainants of the right to reconsign to points east of the Missouri River shipments originally consigned to local points on the Northern Pacific, except at increased and unreasonable rates; that the closing of the Northern Pacific route has deprived complainants of the right to designate that routing except upon an unreasonable basis, in violation of section 15 of the act; and that as a result of the cancellation rates maintained to some points are less than to points directly intermediate thereto, in violation of section 4 of the act.

The rails of the Milwaukee and Northern Pacific are practically parallel from Tacoma to Minnesota Transfer, Minn. From Tacoma to Minnesota Transfer the distance over the Milwaukee is 113 miles shorter than over the Northern Pacific. So far as the record shows the Milwaukee maintains a reasonably satisfactory service between the points of origin and destination, including an ample and readily available car supply. The establishment of a second through route via a competing line would result in short hauling the Milwaukee about 1,800 miles on all shipments originating on the Tacoma Eastern and transported to destinations east of the Missouri River via the Northern Pacific route, and consequently would deprive it on such traffic of transportation revenues to which ordinarily it is entitled by reason of its location and by virtue of its ownership of the Tacoma Eastern, which originates the traffic.

The issue presented, therefore, is whether the Milwaukee, which through its subsidiary originates the traffic and transports it to Tacoma, can be compelled to deliver it at that point to the Northern

Pacific, or whether it is justified in reserving as far as possible the haul to its own rails. That the law upholds the carrier in retaining tonnage on its line where the transportation can be performed with reasonable dispatch and without undue discrimination is well settled; see *Suffern Grain Co. v. I. C. R. R. Co.*, 27 I. C. C., 192, 194; *Wheeler Lumber Bridge & Supply Co. v. A., T. & S. F. Ry. Co.*, 30 I. C. C., 343, 344. It is also settled that our authority under section 15 of the act to establish in the first instance, or to continue in force voluntarily established through routes and joint rates, is limited to the extent that we may not require a carrier, without its consent, to embrace in such through route substantially less than the entire length of its railroad between the termini of the through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established. *Marble Rates from Vermont Points*, 29 I. C. C., 607, 608; *The Ogden Gateway Case*, 35 I. C. C., 131.

It appears that as a result of the cancellation of the joint rates there were left in effect rates to St. Joseph, Mo., and Omaha, Nebr., lower than to various points directly intermediate thereto, and rates to Granite Falls and Pipestone, Minn., higher than to farther distant points to which they are directly intermediate. Defendants stated at the hearing that these violations, which were not protected by appropriate fourth section applications, were unintentional, and would be eliminated. So far as we are advised this has been done.

An order dismissing the complaint will be entered.

45 I. C. C.

No. 8203.¹

WEST COAST LUMBER MANUFACTURERS' ASSOCIATION
ET AL.

v.

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY
ET AL.

Submitted January 27, 1916. Decided June 20, 1917.

On complaints that the cancellation of joint rates voluntarily maintained for many years between certain points on the Spokane, Portland & Seattle Railway and various points in the United States and Canada via Portland, Oreg., and the lines of the Oregon-Washington Railroad & Navigation Company, Oregon Short Line, and Union Pacific railroads and connections, deprives shippers of the right to route their freight except upon an unreasonable basis, in violation of section 15 of the act, and subjects them to the payment of rates which are unjust, unreasonable, and unduly discriminatory; *Held*:

1. That the existing through routes, over which the same joint rates apply as formerly applied over the canceled route, are not shown to be unreasonably long or inadequate, and there does not appear to be public necessity for the reestablishment of the canceled route and rates.
2. That defendants have justified the cancellation of joint rates which applied via the canceled route. Complaints dismissed.

Joseph N. Teal and William C. McCulloch for complainants.

Carey & Kerr and Charles A. Hart for Spokane, Portland & Seattle Railway Company and Transcontinental Freight Bureau carriers.

REPORT OF THE COMMISSION.

HALL, *Chairman*:

These cases, which are interrelated, were briefed together and will be disposed of in one report. By the complaint in No. 8203, manufacturers of forest products seek the reestablishment of through routes and joint rates on lumber and forest products from all points on the Astoria division of the Spokane, Portland & Seattle Railway, hereinafter called defendant, to points east of Denver, Colo. The routes sought are by way of Portland, Oreg., and the lines of the Oregon-Washington Railroad & Navigation Company, Oregon Short Line Railroad Company, Union Pacific Railroad Company, and their

¹ The report also embraces No. 8225, Astoria Chamber of Commerce et al. v. Spokane, Portland & Seattle Railway Company et al.

connections, hereinafter collectively called the Union Pacific route. In No. 8225 the complainants, the Astoria Chamber of Commerce, a civic organization, and the Port of Astoria, a municipal corporation, seek the reestablishment of the through routes and joint rates formerly available on all traffic east and west bound between points on the same division of defendant's line and points east of the Missouri River.

The line of defendant extends easterly from Astoria through Portland to Spokane, Wash. The evidence in No. 8203 was confined to lumber and forest products and in No. 8225 mainly to fish and general merchandise. Our report will deal with those commodities in that order.

LUMBER AND FOREST PRODUCTS.

Prior to May, 1915, shipments of lumber originating on the Astoria division of defendant's line and destined to points east of Denver could be routed via Portland and the Union Pacific route, over which route joint rates were voluntarily maintained for many years. Effective May 10 and 22, and June 21 and 30, 1915, supplements were filed canceling these joint rates, except to points local to the Union Pacific Railroad and some competitive points in Kansas and Nebraska, thus making applicable to all other points via this route combination rates higher than the joint rates theretofore in effect. To points east of the Missouri River the same rates applied and still apply via defendant's line to Spokane and the Northern Pacific, Great Northern, or Chicago, Milwaukee & St. Paul railways, and their connections, hereinafter called the northern routes. To destinations between Denver and the Missouri River these rates are not applicable via the Chicago, Milwaukee & St. Paul. Defendants state that the purpose sought to be accomplished by the cancellation was to conserve the revenues of the originating carrier and to obtain for that carrier its full line haul of approximately 500 miles to Spokane, as against the haul of 100 miles which it formerly had on traffic delivered to the Union Pacific system at Portland.

It was alleged by complainants that, in addition to creating numerous fourth section violations, the cancellations would have the following results: (a) The movement will be confined to longer routes, which are and will be inadequate to handle it expeditiously; (b) complainants are and will be deprived of the privilege of diverting in transit shipments originally consigned to local points on the Union Pacific, except at increased and unreasonable rates; (c) competition in transportation service is and will be reduced and the efficiency thereof jeopardized; (d) the ability of shippers to secure cars during periods of car shortage will be limited; (e) complainants are and will be prevented from competing for business in eastern mar-

kets whenever routing via the Union Pacific route is specified and required by prospective purchasers; (f) the rates to most of the destinations named in the said tariffs are unjust and unreasonable and unduly discriminatory, and in violation of section 4 of the act to regulate commerce; and (g) complainants are deprived of the right to route their freight except upon an unreasonable basis, in violation of section 15 of the act to regulate commerce.

The territory between Denver and the Missouri River is said to furnish complainants' principal consuming market. The distances via the closed route, known as 30 H, and the present available routes to representative points in that territory are compared below:

From Astoria, Oreg., to—	30-H. ¹	30-E. ²		30-A. ³		30-G. ⁴	
	Miles.	Miles.	Excess over 30-H.	Miles.	Excess over 30-H.	Miles.	Excess over 30-H.
Denver, Colo.	1,464	1,805	341	1,952	488	1,954	490
Kansas City, Kans.	2,103	2,126	23	2,273	170	2,275	172
Omaha, Nebr.	1,877	1,984	107	2,130	253	2,132	255

¹ 30-H, via Spokane, Portland & Seattle Ry., Portland, Oreg., Oregon-Washington Railroad & Navigation Co., Huntington, Oreg., Oregon Short Line R. R., Granger, Wyo., and Union Pacific R. R.

² 30-E, via Spokane, Portland & Seattle Ry., Spokane, Wash., Northern Pacific Ry., Billings, Mont., and Chicago, Burlington & Quincy R. R.

³ 30-A, via Spokane, Portland & Seattle Ry., Spokane, Wash., Great Northern Ry., Billings, Mont., and Chicago, Burlington & Quincy R. R.

⁴ 30-G, via Spokane, Portland, & Seattle Ry., Willbridge, Oreg., Northern Pacific Ry., Billings, Mont., and Chicago, Burlington & Quincy R. R.

It will be seen from this table that the canceled route to Denver, for example, is the shortest by 341 miles. It is undisputed that the movement over this additional distance requires from 24 to 36 hours additional time. Defendants contend that as lumber does not require an expedited service the additional distance and time in a haul which at best is for nearly 1,500 miles should not be considered as making the longer route unreasonably long, and that complainants must have considered the northern routes satisfactory since out of a total of 708 cars of lumber shipped in 1914 to points east of Montana, and to Denver and points east thereof, 543 moved via the northern routes as against 165 via the Union Pacific route. Several witnesses on behalf of complainants testified that a large proportion of their shipments moved via Spokane and the northern routes during the time the Portland gateway was open, but to show that service via these routes is not satisfactory evidence was submitted of alleged serious delays, especially at Billings, Mont., where shipments destined to Denver are delivered to the Chicago, Burlington & Quincy Railroad. Delays of this nature are not uncommon and in and of themselves do not properly afford a basis for holding the northern routes unsatisfactory.

In *Omaha Grain Exchange v. C., B. & Q. R. R. Co.*, 26 I. C. C., 553, where we were asked to establish a through route and joint rates on grain from points in Montana to Omaha, Nebr., via Billings, Mont., we said:

Complainant urges that the traffic should follow the line of least resistance and that it be given the benefit of reasonable rates and prompt service via the direct line. Defendants assert that the Great Northern is entitled to retain the long haul on this traffic which it originates and that it should not be diverted to the shorter line via Billings, which, as compared with the Great Northern, has more adverse grades and traverses a more unproductive territory. While the route via Sioux City is substantially longer than that via Billings (about 24 per cent) and sufficiently longer to make it "unreasonably long," we think that as to this traffic, which is not perishable and which moves at all seasons, defendants might perhaps reasonably be relieved of the requirement to establish the through route via Billings if they prefer to establish to Omaha via Sioux City a through route and joint rates not exceeding those contemporaneously charged to Minneapolis.

Complainants contend that, as to much of the traffic which formerly moved via the Union Pacific route, that route was specified by purchasers whose business can not now be procured in the absence of through rates via that route; and that for the same reason they will be deprived of all business where such routing is stipulated by prospective buyers.

FISH AND GENERAL MERCHANDISE.

Joint rates on all traffic except lumber and forest products were established via Portland and the Union Pacific route, effective January 18, 1900, between points on the Astoria division of defendant's line and points east of the Missouri River. During May and June, 1915, joint rates via this route were canceled for the same reasons, as defendants state, that the joint rates on lumber and forest products were canceled, and like objections are made by complainants to this cancellation. Joint rates to local Union Pacific points are still applicable, the only effect of the cancellations being to eliminate the Union Pacific as an intermediate carrier. There are three trans-continental routes still available via defendant's line to Spokane, the Great Northern, the Northern Pacific, and the Chicago, Milwaukee & St. Paul Railway and their connections, and the same rates apply over these routes as formerly applied via the Union Pacific route. The distances are practically the same as via the Union Pacific route to Chicago and all eastern territory reached through that point, while to St. Louis the distance is but 20 miles greater and in no instance does there appear to be a substantial difference. No evidence was introduced as to any westbound traffic which is not adequately served by the available routes.

The principal complainants against the closing of the Union Pacific route on the eastbound movement are shippers of mild cured and frozen fish and pickled and canned salmon, who contend that the cancellation of this route has resulted in a reduction in competition which means inferior service, although it is admitted by complainants' witnesses that the present routes are reasonably satisfactory. As to all other commodities the record shows that about 85 per cent of the shipments during the three years prior to the closing of the Portland gateway moved over the northern routes. Mild cured and frozen fish and salmon, the bulk of which is exported, move under refrigeration; canned salmon in ordinary box cars. Prior to the cancellation of the Union Pacific route export buyers of fish, other than canned salmon, specified that routing in a majority of cases because quicker time was made via that route than via the northern routes, and also because boat connection at the seaboard was formerly guaranteed by the Union Pacific. The greater part of the canned salmon, on the other hand, moved via the northern routes. The record shows movement by water to Portland and thence via the Union Pacific route at the same joint rates which formerly applied in connection with defendant's line, but complainants contend that this water service maintained by the Union Pacific is not so satisfactory or convenient as all-rail service. The average time over the Union Pacific route on refrigerated shipments from Astoria to the Atlantic seaboard is said to be 12 or 13 days, and over the northern routes 14 days. There is no showing of loss of business through the elimination of the Union Pacific route, although owing to the European war no fish has been exported by complainants since the closing of that route.

In empowering this Commission to establish through routes, Congress specifically limited our authority by declaring that we—

shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad * * * which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.

In these cases there are available practicable through routes which embrace the entire length of the originating carrier's railroad, and we would not be warranted in ordering the reestablishment of the canceled routes, and thereby depriving that carrier of a haul of 400 miles, in the absence of a showing that the public interest will suffer from the cancellation of the Union Pacific route, and this fact the complainants have not established. *Marble Rates from Vermont Points*, 29 I. C. C., 607, 608; *The Ogden Gateway Case*, 35 I. C. C., 131. Fears were expressed that the car supply would be inadequate and the transportation service inefficient because of the

cancellation of the Union Pacific route, but no substantial proof was submitted as to either. On the contrary, so far as the record shows, the car supply had apparently been ample, and complainants' traffic was said to be keenly solicited and adequately handled by the carriers serving the northern routes.

No attempt was made by defendants to justify the fourth section violations created by the cancellation of the through rates on lumber. They said that these violations were the result of inadvertence in that the same rates were continued in force to some points while to intermediate points, such as Denver, Omaha, Kansas City, and other Missouri River and eastern terminals of the Union Pacific, joint rates were canceled, leaving applicable thereto combination rates higher than the joint rates theretofore in effect. These violations were not protected by appropriate applications. Defendants stated at the hearing that they would remove them, and our attention has not been drawn to any instance in which they have failed to do so.

We find upon all the facts of record that the existing routes have not been shown to be inadequate or unreasonably long, and that the defendants have justified the cancellation of joint rates via the canceled routes.

An appropriate order will be entered dismissing the complaints.

No. 6917 and 6917 (Sub-Nos. 1 to 5).
HAYDEN BROS. COAL CORPORATION ET AL.

v.

DENVER & SALT LAKE RAILROAD COMPANY ET AL.

Submitted April 6, 1917. Decided June 20, 1917.

Divisions prescribed of joint rates on bituminous coal from Oak Hills, Colo., and points taking the same rates, to stations in Kansas, Nebraska, Missouri, and South Dakota on the Atchison, Topeka & Santa Fe Railway, the Missouri Pacific Railway, and the Chicago & North Western Railway.

Tyson S. Dines, Tyson Dines, jr., Carle Whitehead, and Albert L. Vogl for Denver & Salt Lake Railroad Company.

Robert Dunlap, T. J. Norton, and J. J. Coleman for Atchison, Topeka & Santa Fe Railway Company.

H. A. Scandrett, John Q. Dier, H. G. Herbel, R. B. Scott, and Kenneth F. Burgess for Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, and Missouri Pacific Railway Company.

Robert H. Widdicombe and A. F. Cleveland for Chicago & North Western Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION ON PETITIONS TO PRE-
SCRIBE DIVISIONS.

DANIELS, *Commissioner*:

Our original orders herein, 39 I. C. C., 94, required the establishment of through routes and joint rates on bituminous coal from the Oak Hills, Colo., district on the line of the Denver & Salt Lake Railroad, hereinafter called the Moffat road, to destinations in Kansas, Nebraska, Missouri, and South Dakota on the lines of the Atchison, Topeka & Santa Fe Railway, Missouri Pacific Railway, and Chicago & North Western Railway. The rates prescribed were in general the same as the rates from the Walsenburg, Colo., or Rock Springs, Wyo., districts to the same destinations, except that in No. 6917 and in sub-complaint No. 2 the defendants were required to publish rates which should not exceed the Walsenburg rates by more than 50 cents per net ton. The carriers involved were unable to agree upon the divisions of the rates prescribed, and this supplemental proceeding arises upon

petition of the Moffat road that the Commission determine just and reasonable divisions which should accrue to each of the participating lines.

The inability of parties to agree upon divisions arises out of conflicting ideas as to which carrier or carriers should bear the shrinkage caused by the participation of a third line in traffic previously involving a two-line haul. The initial line, by reason of its severe operating conditions, urges that it can make no further sacrifice, and claims its present divisions result in a loss on the service which it performs. The delivering lines contend that consideration should be given to the fact that coal from the Oak Hills district displaces that which could be supplied by those roads from producing points on their own lines, and thus deprives them of a longer haul if the coal were to originate at the latter points. But this last contention was also offered by these same carriers in the original case, and was there rejected as not being a sufficient reason for refusing to establish joint rates from Oak Hills to such destinations. Likewise, in the matter of divisions, such a proposition can not be controlling in the determination of the portion of the rate which should accrue to the delivering lines for the service which they perform on coal originating at the Oak Hills mines.

The rate on lump coal from the Walsenburg district to the Missouri River and the eastern portions of Kansas and Nebraska is \$3.75 per net ton. The rate to points in the western portions of Kansas and Nebraska on the lines of the Union Pacific Railroad and Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, is generally \$3.50 per ton. A rate of \$3.25 applies to a group of stations on the Missouri Pacific Railway in Kansas, east of which the rate is \$3.75. The rates from Walsenburg to points in Kansas on the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, are generally 10 cents per ton higher than the rates to points in adjacent territory served by other lines.

The Walsenburg basis of rates was originally established from Oak Hills to points on the Union Pacific and Burlington railroads over two-line routes and divisions were voluntarily arranged. In these two-line hauls to points in the territory taking the Missouri River rate of \$3.75 the Moffat road receives \$1.30 per ton, and to points within the \$3.50 group it receives \$1.213 or \$1.215 per ton. The effect of our orders in subcomplaints Nos. 1, 3, 4, and 5 has been to extend the rates applicable to these two-line hauls over routes involving three carriers. Provision must therefore be made for compensating the third carrier; but the initial, intermediate, and delivering carriers are not in harmony as to the portion of the total rate which each of the three lines should receive. In the main complaint

and in subcomplaint No. 2 the rates apply via Denver and the Santa Fe, involving two lines only.

The Moffat road is not interested in the division of the rates east of Denver. It demands \$1.30 per ton for its service, and in justification therefor recited at length the difficulties encountered in the movement of traffic from Oak Hills to Denver. The Oak Hills district lies on the western slope of the main range of the Rocky Mountains. The railroad crosses the continental divide at an altitude of 11,660 feet with 44 miles of 4 per cent grade, 27 miles ascending from the west and 17 miles descending. On other portions of the road the grades reach 2 per cent. From November until May, the period of heaviest coal consumption, the maximum tonnage, including the weight of cars and contents, that can be hauled by three locomotives over the summit of the divide is from 950 to 1,000 gross tons, or about 16 loaded cars. These figures show, and this is admitted by all parties, that the operating conditions of this road are severe; but witness for that carrier expressly stated that it was not asking participating lines to share in the burden of its operating disabilities.

Reference was also made by a witness for the Moffat road to what was claimed to be an analysis, prepared for the information of bondholders and covering the year 1915, of the cost of operation for the length of haul extending over the 44 miles of 4 per cent grade. This analysis, however, was not filed of record, and objection was properly made by opposing counsel to any deductions made therefrom. They further filed in answer thereto copy of a recent decision of the Public Utilities Commission of Colorado, in which they contend this very same cost estimate was considered and rejected as unsound by that tribunal.

An exhibit was introduced on behalf of the Moffat road purporting to show the average cost per ton of the transportation of coal from Oak Hills to Denver as amounting to \$1.41 per ton. The testimony offered to support this figure is not convincing. In one part of the record on cross-examination witness for the Moffat road stated that from the total revenue received by the Moffat road for the period covered, the item "operating expenses, all freight" was computed and apportioned among the separate classes of freight. That assigned to coal was then reduced to a cost per ton-mile basis and multiplied by the average length of haul to determine the resulting cost per ton. Further on, again on cross-examination, this witness testified that the cost per ton of transporting all freight was not apportioned to the separate classes of freight, but applied directly to the coal traffic. It appeared that these figures embraced not only coal destined to the territory herein involved, but also all tonnage con-

sumed locally in Denver, amounting to a large percentage of the total coal handled, and on which necessarily a greater cost is incurred because of terminal deliveries, switching services, and the like, in Denver, which are not present in the case of traffic turned over to an intermediate line.

On these facts the estimate of \$1.41 per ton can not be accepted as reflecting the actual cost of handling the coal traffic here under consideration over the Moffat road from the mines to Denver. Furthermore, despite this claim of a cost of handling of \$1.41 per ton, it is significant that the Moffat road did not contest the divisions which we in *Coal Rates from Oak Hills*, 35 I. C. C., 456, and 40 I. C. C., 497, accorded it of \$1.18 on lump and \$1.12 on the other grades of coal.

On the strength of this cost estimate the Moffat road insists that it is fully entitled to a division of \$1.30 per ton. It alleges, and has endeavored to prove, that that amount represents less than the out of pocket cost of the transportation and therefore must be a reasonable division of the joint rates. It urges that its willingness to handle this coal traffic for the present at what it considers will be a net loss of 11 cents per ton is based solely upon a desire to develop the territory which it serves.

The average distance at the present time from the Oak Hills district to Denver is stated by the Moffat road to be 212 miles. When application for the Walsenburg basis was urged the average distance given was 195 miles. The increase in this average mileage is due to the voluntary extension westward by the Moffat road of this blanket rate to embrace mines as far west as Steamboat Springs. Opposing carriers contend that the Moffat road should bear this stretching of the blanket of origin, and that the average mileage previously existing should control. We consider this to be proper, and in the determination of divisions will use an average haul on the Moffat road of 195 miles.

The carriers concerned in the transportation east of Denver deny that the Moffat road is entitled to a division of \$1.30 per ton and cite our supplemental reports in *Coal Rates from Oak Hills, supra*. Our orders therein prescribed for the Moffat road \$1.18 per ton on lump coal and \$1.12 per ton on other kinds as its divisions of the joint rates to points on the Chicago, Rock Island & Pacific Railway. Those divisions were inclusive of a switching charge of 20 cents per ton at Denver. They were not acceptable to the Moffat road and, although not at that time contesting our decision, upon the expiration of our order therein that carrier attempted to cancel the joint rates. The tariffs proposing such cancellation were suspended in In-

vestigation and Suspension Docket No. 922, *Oak Hills, Colo., Coal*, which has been submitted and is now awaiting determination.

In *Coal Rates from Oak Hills, supra*, the Moffat road, as here, requested divisions of \$1.30 or more for its haul from the mines to Denver. In that case a two-line haul was involved, and, as before mentioned, divisions were allowed the Moffat road of \$1.18 per ton on lump coal and \$1.12 on the other grades. It has been noted that in the instant case, however, a three-line haul is required, and were the conclusion to be adopted that all three lines should bear the shrinkage caused by the entrance of the third line, a lesser division would accrue to the Moffat road. The record shows that the Moffat road considers the Walsenburg basis of rates necessary in the Oak Hills district if mines in the latter are to compete with the Walsenburg mines in the destination territory. It should follow that that road must participate in its fair proportion in the shrinkage in revenue necessary to accomplish this result.

Upon the evidence before us we are of opinion that the first approximation to a fair division to the Moffat road would be made upon a mileage prorate basis, with proper additions for its extra service as the originating carrier of assembling at the mines. In the determination of the extent of this addition, however, certain factors must be considered. It appears that the majority of the equipment used is furnished by the intermediate line, and that the wear on such equipment is extremely severe. The assembling cost of that carrier does not appear to be great. The fact also appears that this Oak Hills coal displaces at the destinations coal which would otherwise originate on the lines of the delivering carriers and on which they would secure a much longer haul. This must be given consideration to the extent that it shows that the existing arrangement inures largely to the benefit of the Moffat road.

All these facts necessarily go to offset the addition to a strict mileage prorate which the Moffat road might otherwise claim as an originating carrier. Upon this basis of a mileage prorate plus an addition for its service as the initial line, offset to some extent by the conditions above mentioned, we conclude and find that the Moffat road is entitled to divisions of \$1.15 per ton on lump coal and \$1.10 per ton on nut, pea, and slack coal, except that when the rates on these latter grades are the same as the rates on lump coal the division should be \$1.15 per ton. For its average haul of 195 miles the \$1.15 division will accord to the Moffat road ton-mile and car-mile earnings of 5.90 mills and 20.65 cents, respectively. Under the \$1.10 division the respective figures will be 5.65 mills and 19.75 cents. An average loading of 35 tons per car is used.

NO. 6917 AND SUBCOMPLAINT NO. 2.

The main complaint and subcomplaint No. 2 sought the establishment of through routes and joint rates from Oak Hills to points on the Santa Fe in Kansas between Scott City and Garden City and to points in Kansas and Missouri east, northeast, or southeast thereof, except stations on the Superior, Nebr., branch and its branches north of Abilene, including the Salina and Barnard branches. We found that the Santa Fe should join with the Moffat road in establishing the through routes and joint rates, and that these rates should not exceed the rates then in effect from Walsenburg to the same destinations by more than 50 cents per net ton.

The rails of the Santa Fe extend directly from Denver, through Pueblo, to the points embraced within these complaints, and also from the Canon City-Rockvale coal district, 37 miles west of Pueblo. Under the plan suggested by the Santa Fe the rates would be divided by allowing it 25 cents per ton less than it receives on coal from the Rockvale district to the same points. As the rates from Rockvale are 10 cents per ton lower than the Walsenburg rates, and therefore 60 cents lower than the rates from Oak Hills, this would leave 85 cents per ton for the Moffat road, yielding 4.3 mills per ton-mile. Under such divisions the ton-mile earnings of the Santa Fe would exceed those of the Moffat road even to points on the Missouri River over 700 miles from Denver.

The divisions proposed by the Santa Fe for the Moffat road clearly would be unfair and possibly unremunerative. We have found that the latter is entitled to \$1.15 per ton on lump coal and \$1.10 on the lower grades of coal for its division of the three-line haul rate. The following table shows the divisions and the earnings thereunder that would accrue to the Santa Fe at the present rates to a few representative destinations after allowing the Moffat road the above divisions. Car-mile earnings are based on 35 tons per car, 2 tons less than the average on the Moffat road and a fraction of a ton in excess of the average on the Santa Fe.

REPRESENTATIVE DESTINATIONS IN NO. 6917.

From Oak Hills to—	Distance from Denver.	Rates.		Santa Fe divi- sions.		Revenue per ton-mile.		Revenue per car- mile, lump coal.
		Lump coal.	Nut, pea, and slack.	Lump coal.	Nut, pea, and slack.	Lump coal.	Nut, pea, and slack.	
	<i>Miles.</i>					<i>Mills.</i>	<i>Mills.</i>	<i>Cents.</i>
Garden City.....	334	\$3.35	\$2.85	\$2.20	\$1.75	6.60	5.24	23.1
Dodge City.....	384	3.35	2.85	2.20	1.75	5.73	4.57	20.1
Kinsley.....	420	3.85	3.35	2.70	2.25	6.44	5.37	22.5
Larned.....	445	3.85	3.35	2.70	2.25	6.07	5.06	21.2
Hutchinson.....	504	3.85	3.35	2.70	2.25	5.37	4.47	18.8
Harper.....	565	3.85	3.35	2.70	2.25	4.79	3.98	16.8
McPherson.....	529	3.85	3.35	2.70	2.25	5.11	5.26	17.9
Moline.....	647	4.10	3.60	2.95	2.50	4.56	3.87	16.0
Chanute.....	694	4.35	3.85	3.20	2.75	4.62	3.97	16.2

REPRESENTATIVE DESTINATIONS IN SUBCOMPLAINT NO. 2.

	<i>Miles.</i>					<i>Mills.</i>	<i>Mills.</i>	<i>Cents.</i>
Meriden.....	681	\$4.35	\$2.85	\$3.20	\$2.75	4.70	4.04	16.4
Hawthorne.....	713	4.35	3.85	3.20	2.75	4.50	3.86	15.7
Atchison.....	720	4.35	3.85	3.20	2.75	4.45	3.82	15.6
Lawrence.....	691	4.35	3.85	3.20	2.75	4.63	3.98	16.2
Leavenworth.....	734	4.35	3.85	3.20	2.75	4.37	3.75	15.3
Wildor.....	713	4.35	3.85	3.20	2.75	4.50	3.86	15.7
Holliday.....	709	4.35	3.85	3.20	2.75	4.52	3.88	15.8

The rate of \$3.35 per ton on lump coal applies to a small group of stations between Garden City and Dodge City. The average distance from Denver is 359 miles and the average earnings of the Santa Fe, after allowing \$1.15 per ton for the Moffat road, would be 6.13 mills per ton-mile and 21.4 cents per car-mile. The average distance from Denver to the points shown as taking a rate of \$3.85 on lump coal is 493 miles, for which average distance the revenues per ton-mile and per car-mile accruing to the Santa Fe would be 5.48 mills and 19.15 cents, respectively. This rate is blanketed over a large part of central and southern Kansas, and if the average of the distances to all points within the group were taken the revenue per ton-mile would probably be somewhat less. Harper, for example, is 565 miles from Denver and under the division of \$2.70 the Santa Fe would earn on lump coal 4.78 mills per ton-mile and 16.73 cents per car-mile.

The average distance from Denver to the representative destinations in subcomplaint No. 2 is 709 miles and the average earnings of the Santa Fe on lump coal are 4.52 mills per ton-mile and 15.8 cents per car-mile. The Missouri River rates of \$3.75 and \$3.25 per ton apply on lump and nut coal, respectively, from Rockvale to these points. This distance from Rockvale is 80 miles less than the distance from Denver, and under those rates the Santa Fe earns an average of 5.9 mills on lump coal and 5.2 mills on nut. The rate on lump coal from Walsenburg is \$3.85 per ton, out of which

the Santa Fe apparently receives \$3.30, or slightly less than 5 mills per ton-mile.

Earnings of 4.5 mills per ton-mile or less are not unusual under the rates established by the carriers for the transportation of coal from the coal districts of Colorado and Wyoming to points in eastern Kansas and Nebraska. For example, the Union Pacific accepts \$2.45 per ton as its proportion of the rate of \$3.75 from Oak Hills to Omaha, 560 miles from Denver, yielding 4.37 mills per ton-mile. It earns 3.41 mills on lump coal from Evanston, Wyo., to points on the Chicago & North Western Railway in Nebraska and South Dakota. Also, the rate from Oak Hills to Atchison, Kans., 619 miles from Denver by way of the Burlington, is \$3.75 per ton, out of which that carrier earns less than 4 mills per ton-mile under its division with the originating line.

Upon consideration of the evidence we are of opinion and find that the rates on coal from Oak Hills to the destinations involved in the main complaint and in subcomplaint No. 2 should be divided by allowing the Moffat road the proportions hereinbefore found reasonable for the service to Denver, with remainder to the Santa Fe.

SUBCOMPLAINTS NOS. 1, 3, AND 4.

In subcomplaints Nos. 1, 3, and 4 the complainants asked for the establishment of through routes and joint rates on the Walsenburg basis to (1) stations on the Missouri Pacific Railway in Kansas and Nebraska north of the line running from Kansas City through Goffs to Stockton and Lenora, Kans., also on the line extending from Kansas City to Omaha, with branches to Menager Junction, Kans., St. Joseph, Mo., and Crete and Lincoln, Nebr., (2) to stations on the Santa Fe between Superior, Nebr., and Abilene, Kans., including stations on the Salina and Barnard branches, and (3) to stations on the Chicago & North Western Railway, hereinafter called the North Western, from Hastings to Fremont, from Superior to Linwood, and from Lincoln to Cedar Bluffs, all in Nebraska. The destination territories involved in these subcomplaints are shown on the maps on pages 108, 99, and 113 of our original report herein. The routes proposed were via the Burlington from Denver to the various junctions with the delivering lines in Kansas and Nebraska. We found that the carriers defendant should establish the through routes prayed for and should publish joint rates not in excess of \$3.75 per net ton. Our orders did not provide for lower rates on nut, pea, and slack coal, and the rate of \$3.75 applies on all kinds except to a few points on the North Western.

The formula by which the Burlington proposes to divide the joint rates is first to allow the Moffat road \$1 per ton for its service as the originating carrier and then to subdivide the balance on a mileage prorate, with a minimum of 25 per cent of such balance to the destination lines. This method is satisfactory to the Missouri Pacific, although it has suggested that 95 cents per ton should be the maximum allowance to the Moffat road, but is opposed by both the Santa Fe and the North Western. The latter carriers under this plan would receive a minimum of 68.75 cents per ton. The average distance from Superior to the destinations in which the Santa Fe is interested is 72 miles, and from the junctions to points on the North Western it is somewhat less.

The Santa Fe demands a division of \$1 per ton, which is the Kansas distance tariff rate on soft coal for distances between 71 and 80 miles. The North Western asks for 93.7 cents per ton, the same division that it now receives in connection with the Union Pacific Railroad on coal from Rock Springs. Both carriers contend that the joint rates are too low to permit of division between three carriers with proper proportions to each.

The position of the North Western is that it should not be required to accept less on coal from Oak Hills than it accepts on other coal from Colorado or Wyoming. The traffic density on this section of its line is light and whatever coal tonnage would move from Oak Hills would displace tonnage from other fields on which greater revenue is earned. The position of the Santa Fe is much the same. It has heretofore supplied the territory south of Superior largely from mines on its rails at Rockvale and has therefore enjoyed the entire haul. This, it is urged, should be considered in prescribing the divisions. Although, as above stated, this fact can not control the fixation of reasonable divisions, still it serves as one factor in their determination as indicative of the relative position in which each carrier would be placed and the advantage or disadvantages falling to each if the question were one of bargaining as between themselves.

We have hereinbefore found that the Moffat road is entitled to a division of \$1.15 per ton on lump coal, leaving \$2.60 per ton to be divided between the lines east of Denver. The result of applying the method of dividing on a mileage prorate with a minimum of 25 per cent to the short line, which is a common method of dividing rates when an originating or delivering line has a relatively short haul, is shown in the following table. The car-mile earnings stated therein are based on a weight of 35 tons per car.

Destination.	Junction.	Chicago, Burlington & Quincy R. R.				Destination line.			Delivering line.
		Miles.	Division.	Revenue per ton-mile.	Revenue per car-mile.	Miles.	Division.	Revenue per mile.	
Prosser.....	Hastings.....			<i>Mills.</i> 5.00	<i>Cents.</i> 17.5	14	65	46.40	<i>Cents.</i> 162.20
Greenleaf.....		390	1.950	4.04	17.3	136	67.2	4.95	17.31
Virginia.....			1.584	4.07	14.2	250	101.6	4.07	14.20
Hickman.....	Crete.....					21	65	31.00	108.40
Panama.....		470	1.950	4.15	14.5	27	65	24.10	84.30
Cook.....						48	65	13.55	47.40
Walton.....	Lincoln.....					9	65	72.30	253
Weeping Water.....		487	1.950	4	14	35	65	18.58	65
Omaha.....						74	65	8.79	30.78
Auburn.....	Nebraska City.....					23	65	28.30	99.49
Archison.....		545	1.950	3.58	12.5	106	65	6.13	21.45
Kansas City.....						152	65	4.23	14.99
Webber.....	Superior.....	402	1.950	4.85	17	7	65	92.90	325
Longford.....						74	65	8.79	30.78
Barbard.....						124	65	5.24	18.33
Flickville.....	Hastings.....	390	1.950	5	17.5	6	65	108.20	378.80
Thayer.....						74	65	8.79	30.78
Morse Bluff.....						111	65	5.85	20.48
Cadams.....	Superior.....	402	1.950	4.85	17	7	65	92.90	325
Cordova.....						64	65	10.15	35.50
Abie.....						116	65	5.60	19.60
Arbor.....	Lincoln.....	487	1.950	4	14	6	65	108.20	378.80
Swedeberg.....						24	65	27.10	94.80
Cedar Bluffs.....						43	65	15.10	52.85

It will be observed that to all destinations except a few on the Missouri Pacific Railway reached through Hastings the minimum of 25 per cent of the proportion east of Denver would determine the amount of the divisions. The destination lines would receive 65 cents per ton, or \$22.75 per car, and the Burlington would receive \$1.95 per ton, or \$68.25 per car. The earnings of the Burlington would range from 5 mills per ton-mile and 17.5 cents per car-mile at Hastings to 3.58 mills per ton-mile and 12.5 cents per car-mile at Nebraska City. The average earnings to the different junctions would be 4.4 mills per ton-mile and 15.35 cents per car-mile, or more than it earns under its division of the two-line rate to Atchison. The lowest revenue that would accrue to the destination lines would be 4.07 mills per ton-mile, 14.20 cents per car-mile, on shipments destined to Virginia, Nebr., on the Missouri Pacific Railway, 250 miles from Hastings.

Upon consideration of the record we are of opinion and find that the rates on coal from Oak Hills to the destinations involved in sub-complaints Nos. 1, 3, and 4 should be divided by giving to the Moffat road \$1.15 per net ton, the remainder to be subdivided between the Burlington and Missouri Pacific Railway, Santa Fe, and North Western on the basis of a mileage prorate with a minimum of 25 per cent to the destination lines.

SUBCOMPLAINT NO. 5.

In subcomplaint No. 5 we required the Moffat road, Union Pacific Railroad, and Chicago & North Western Railway to establish through routes and joint rates applicable thereto from Oak Hills to stations on the North Western between Fremont and Valentine, Nebr., including stations on the loop running through Albion, Nebr.; between Norfolk, Nebr., and Winner, S. Dak.; and between Fremont and Blair and Omaha, Nebr. The rates from Rock Springs to these destinations were prescribed as maxima from Oak Hills. A rate of \$4 per ton applies on lump coal to all stations except those north of Neligh, Nebr., on the line to Valentine, and north of Creighton, Nebr., on the branch extending to Winner. The rates to points north of the stations mentioned range from \$4.05 per ton to \$4.85 per ton at Valentine and \$5 per ton at Winner.

The method proposed by the Union Pacific for dividing the blanket rate of \$4 from Oak Hills is substantially the same as that proposed by the Burlington where it is the intermediate carrier; that is, to allow the Moffat road \$1 per ton and subdivide the balance on a mileage prorate with a minimum of 25 per cent to the North Western. On this basis the divisions east of Denver would be: Union Pacific,

\$2.25 per ton; North Western, 75 cents per ton. Where the rates are higher than \$4 the Union Pacific asks a proportionate increase in its divisions. Coal destined to the points here under consideration is delivered by the Union Pacific to the North Western at Fremont or Norfolk, 523 and 528 miles, respectively, from Denver, and under the method suggested the former would earn from 4.3 mills to 4.6 mills per ton-mile.

As in subcomplaint No. 4, the North Western demands the same divisions on Oak Hills coal that it receives on coal from Rock Springs. These divisions range on lump coal from a minimum of \$1 per ton to a maximum of \$2. It contends that the fact that three carriers participate in the transportation from Oak Hills, whereas but two are concerned in the movement from Rock Springs, should not affect its divisions of the rates. The Union Pacific is equally insistent that whatever shrinkage may be required in order to divide the Oak Hills rates between three carriers should be borne in proper proportion by each.

Coal originating at Rock Springs destined to points on the North Western reached by way of Fremont is carried over the rails of the Union Pacific a distance of 763 miles. For this service the Union Pacific receives \$3 per ton, or 3.93 mills per ton-mile. The same rate applies from Evanston, Wyo., 115 miles west of Rock Springs and 878 miles from Fremont. Under its division the Union Pacific earns 3.41 mills per ton-mile on coal from Evanston. Based on 35 tons per car, the car-mile earnings are: From Rock Springs, 13.8 cents; from Evanston, 11.9 cents. If the rate of \$4 from Oak Hills is divided by allowing the Moffat road \$1.15 per ton, which is the division we have found reasonable for the service to its interchange point with the intermediate line at or near Denver, with 75 per cent and 25 per cent of the balance to the Union Pacific and North Western, respectively, the divisions east of Denver would be: Union Pacific, \$2.13 $\frac{3}{4}$; North Western, 71 $\frac{1}{4}$ cents. The Union Pacific would earn 4.05 mills per ton-mile, or 14.15 cents per car-mile, on traffic routed through Norfolk, and 4.08 mills per ton-mile, or 14.28 cents per car-mile, on traffic routed through Fremont. These earnings are slightly higher than those which the Union Pacific now voluntarily accepts on coal from Rock Springs, and are also higher than the Union Pacific's earnings on coal from Evanston.

We conclude and find that the following are just and reasonable divisions of the rates on lump coal from Oak Hills to the destinations on the lines of the Chicago & North Western Railway involved in subcomplaint No. 5: Moffat road, \$1.15 per ton; Union Pacific, \$2.13 $\frac{3}{4}$ per ton; the balance to accrue to the Chicago & North Western.

The evidence upon the supplemental hearing related to the divisions of the rates on lump coal. Since the hearing the Moffat road has filed a tariff, effective April 20, 1917, containing specific rates on nut, pea, and slack coal to North Western destinations, which, in most instances, are lower than the rates on lump coal. The record affords no basis for determining the divisions of such rates and the carriers will be expected to work out those divisions substantially in the manner herein approved for lump coal.

Orders will be entered in conformity with our conclusions herein.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted January 11, 1917. Decided June 20, 1917.

Finding in *Arlington Heights Fruit Exchange v. S. P. Co.*, 39 I. C. C., 88, that reparation be denied on pre-cooled and pre-iced oranges transported from California originating points to destinations in other states and in Canada, reaffirmed on reargument.

Cassoday, Butler, Lamb & Foster for California Fruit Growers Exchange.

W. F. Herrin, C. W. Durbrow, and F. H. Wood for Southern Pacific Company.

A. S. Halsted for San Pedro, Los Angeles & Salt Lake Railroad Company.

Robert Dunlap, T. J. Norton, and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION ON SUPPLEMENTAL
PETITION FOR REPARATION.

DANIELS, Commissioner:

In our original report in this case on complainants' supplemental petition for reparation, *Arlington Heights Fruit Exchange v. S. P. Co.*, 39 I. C. C., 88, reparation as prayed by complainants in the difference between defendants' charge of \$30 per car on carload shipments of pre-cooled and pre-iced oranges transported from originat-

ing points in California to destinations in other states and in Canada, and the charge of \$7.50 per car prescribed by us in *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106, upheld by the Supreme Court of the United States, *A., T. & S. F. Ry. Co. v. United States*, 232 U. S., 199, was denied. In the first-named report reparation on similar shipments of precooled oranges, made prior to the establishment by the defendants of the precooling charge, upon which shipments standard refrigeration charges were assessed and collected, was also denied. Defendants raised numerous objections to complainants' claim for reparation, but we did not determine the force of all these objections because we were of the opinion that our order prescribing the charge of \$7.50 effected a complete readjustment of the carriers' charges and, in the circumstances, reparation should therefore be denied. Complainants, subsequent to the promulgation of the report denying reparation, filed a petition for rehearing, assigning eight grounds of error of the Commission. The petition was granted and the case has now been reargued on brief and orally.

The eight assignments of error are reducible to four principal grounds, numbered 1, 2, 3, and 7 by the complainants, asking that our decision denying reparation be reconsidered. These will be stated and considered *seriatim*.¹

1. *The Commission erred in denying reparation to complainants on the ground that the effect of the Commission's order prescribing reasonable charges on precooled shipments of oranges was to prescribe a complete readjustment in the carriers' charges.*

Boxed oranges, moving under ventilation or refrigeration, were loaded in cars at spaced intervals in order to permit the circulation of air. By this method the boxes could be loaded only six tiers wide. When oranges were precooled, air spaces between the boxes were

¹ The assignments of error not specifically analyzed in the body of the report herein are:

4. That the Commission erred in holding that common carriers are entitled to more than a reasonable charge for the performance of a new service.

5. That the Commission erred in failing to find that the charge of \$30 per car on precooled shipments of oranges was unreasonable during all the time that such shipments, paying such charges, moved.

6. That the Commission erred in holding complainant not entitled to an award of reparation upon those precooled shipments, on which the charge of \$30 per car was assessed and collected, which moved during the time between the date of the promulgation of the Commission's order and the effective date thereof, without regard to the reasonableness or unreasonableness of the charge so collected.

8. That the Commission erred in failing to find that the standard refrigeration charges assessed and collected on precooled shipments of oranges moving prior to the establishment of a tariff charge for such precooled shipments were unreasonable.

Assignment 4 is practically a reassertion of assignment 1. Obviously, the Commission did not hold that "carriers are entitled to more than a reasonable charge for the performance of a new service."

Assignment 5 is discussed under assignment 3.

Assignment 6 is comprehended in the discussion under assignment 1.

Assignment 8 is different from assignment 7 only in that the legality, as contradistinguished from the reasonableness, of the standard refrigeration charges is involved.

The evidence upon the supplemental hearing related to the divisions of the rates on lump coal. Since the hearing the Moffat road has filed a tariff, effective April 20, 1917, containing specific rates on nut, pea, and slack coal to North Western destinations, which, in most instances, are lower than the rates on lump coal. The record affords no basis for determining the divisions of such rates and the carriers will be expected to work out those divisions substantially in the manner herein approved for lump coal.

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The eight assignments of error are reducible to four principal grounds, numbered 1, 2, 3, and 7 by the complainants, asking that our decision denying reparation be reconsidered. These will be stated and considered *seriatim*.¹

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6. That the Commission erred in holding complainant not entitled to an award of reparation upon those precooled shipments, on which the charge of \$30 per car was assessed and collected, which moved during the time between the date of the promulgation of the Commission's order and the effective date thereof, without regard to the reasonableness or unreasonableness of the charge so collected.

8. That the Commission erred in failing to find that the standard refrigeration charges assessed and collected on precooled shipments of oranges moving prior to the establishment of a tariff charge for such precooled shipments were unreasonable.

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unnecessary, and the solid loading permitted precooled cars to be loaded with boxed oranges seven tiers wide. The addition of another tier increased the weight of the paying freight exactly one-sixth, adding \$53 or \$55 to the carriers' transportation receipts, dependent upon the length of the car in which the oranges were loaded. In prescribing for the future the charge of \$7.50, we permitted the carriers to require, as a condition of the new charge, that precooled cars be loaded seven tiers wide. Thus, although the per car charge for the future on precooled shipments of oranges was reduced by \$22.50, the transportation revenues of the carriers were increased, under the condition as to heavier loading, to the extent above indicated. If, as would be necessary if reparation were awarded, we were to apply retroactively to the past shipments the new rule or regulation provided for future shipments, we would be unable, under the law, to require first that the carriers' charges on the basis of the new minimum should be collected as a prerequisite to awarding damages on the basis of the new charge. The readjustment of the carriers' charges was therefore complete. The fact that the charges on only one commodity were considered does not affect the result that the carriers' charges as to that commodity were readjusted. Not alone was a readjustment of the carriers' charges effected, but the number of cars necessary to transport the crop was materially decreased and the train loading augmented.

2. *The Commission erred in assuming that it has discretion to award or refuse reparation without regard to the fact that the charges collected may have been unreasonable or otherwise unlawful and in denying complainants' claim for reparation under such erroneous assumption.*

To enable us to prescribe reasonable rates the Congress has delegated to us a quasi legislative or administrative power in the exercise of which there inheres necessarily and admittedly a wide but sound discretion aptly termed the "flexible limit of judgment which belongs to the power to fix rates." *Atlantic Coast Line v. N. Car. Corp. Com'n*, 206 U. S., 1, 26. We are of the opinion that this "flexible limit of judgment" obtains equally whether the rate to be fixed is to apply as of the past, for the present, or for the future. The discretion is just as wide and as broad in respect of a past as of a future rate, but in exercising the function the end to be attained in its exercise must be kept in mind. For the future we are endeavoring to prevent a public wrong; as to the past we have to look only to the remedying of a private injury by awarding damages. *Baer Bros. v. Denver & R. G.*, 233 U. S., 479. The only effect of finding a rate attacked unreasonable or otherwise unlawful as of the past is to afford a basis upon which to predicate an award of damages. More-

over, section 16 of the act provides "that if * * * the Commission shall determine that any party complainant is entitled to an award of damages," etc., we shall make an order directing the carrier to pay the complainant the sum to which he is entitled. In this case we were of the opinion that complainants had not been damaged, and we were therefore not impressed with the necessity of a finding that the charge assessed in the past was unreasonable. It was not an exercise of an arbitrary discretion to award or not award reparation.

3. *The Commission erred in failing to make a finding upon the issue of unreasonableness of the charges assessed upon complainants' precooled shipments during the time prior to the effective date of the Commission's order prescribing reasonable charges for such shipments in the future and in failing to determine what would have been reasonable charges for such shipments at the time they moved.*

We said on April 27, 1916, when reparation was denied:

While complainant admits that the Commission found the \$7.50 rate reasonable only for the future, it contends that we should now determine the reasonableness of the rates in the past and award reparation on that basis. The Commission, however, was considering a novel service only recently introduced, whose efficiency and permanence was in some degree problematical.

We did not in express terms find that the precooling charge was reasonable in the past, but the fair inference to be drawn from the language used was that, in our opinion, the then prevailing charge had not been proved to have been unreasonable. When we issued our report on the orange and on the lemon rates, *Arlington Heights Fruit Exchange v. So. Pac. Co.*, 19 I. C. C., 148, it was our view that the record as then made was insufficient upon which to make a finding as to the reasonableness of the standard refrigeration and precooling charges and when rendering the report on June 11, 1910, *supra*, referred to the fact that we were ourselves investigating these charges. Yet complainants now ask that on this record, then inadequate upon which to base a finding for the future, we now find the charge to have been unreasonable on shipments moving prior to the filing of the complaint.

Defendants urge that on the record a finding that the \$30 charge was unreasonable would be a finding without evidence as the Commissioners "can not act upon their information as could jurors in primitive days." *I. C. C. v. L. & N. R. R. Co.*, 227 U. S., 88, 93. Even as late as January 14, 1911, when the report in 20 I. C. C., 106, on standard refrigeration and precooling charges was announced, we did not find that precooling was feasible beyond all doubt or question, although the testimony tended to confirm "the claim of complainants that precooling, when conducted as the complainants say

it should be, is feasible." Neither could we affirm "with entire confidence that precooling can take the place of standard refrigeration under all circumstances." We quote from our report in these respects to indicate that all elements of doubt had not been finally resolved and that on the record the only legitimate finding to be made was as to the future.

Since no claim was made that the charges for standard refrigeration did not bear a proper relation to one destination as compared to another, we considered the standard refrigeration charge of \$62.50 per car from California points to Chicago, Ill., and found it not unreasonable. In respect of precooling and pre-icing we found the cost, including interest on the investment and depreciation of the plant, to be from \$30 to \$35, "a fair average being, perhaps, \$32.50" per car. We found that there could be no serious question that the carrier in establishing this charge of \$30 intended to equalize the cost by the two methods—standard refrigeration and precooling. The defendants now contend that inasmuch as the standard refrigeration charge was not found unreasonable and complainants admit they "broke even" with their competitors who paid the standard refrigeration charge, the charge of \$30 collected by the carriers "was almost exactly what the square dealing enjoined by the act required." We now find that the precooling charges have not been shown to have been unreasonable prior to the effective date of our order. It follows that there is no basis for reparation. And lest we be held to have been inconsistent by establishing a charge for precooling for the future and refusing to find that a similar charge for the same service would have been reasonable in the past, we again advert to the fact that the new duplex regulation or practice we prescribed for the future was composed of two inseparable factors, a lower charge per car, decreasing the carriers' revenue as to the service they performed in connection with precooled shipments of oranges, accompanied by a condition for a higher minimum loading requirement, materially increasing the revenue which would accrue to the carriers in the future for the transportation service.

Complainants and defendants in their contentions as to our power to award or deny reparation are widely divergent, complainants asserting that we must, as a matter of course, award reparation when we have condemned a rate; defendants arguing that we are without authority to award any damages merely because we have found a rate to be or to have been unreasonable. But we think that the *Baer Bros. Case, supra*, responds negatively to both these contentions, for the court there held that persons may be entitled to reparation and not to a new rate; or to a new rate and not to reparation.

7. *The Commission is alleged to have erred in finding that the standard refrigeration charges were lawfully applicable upon pre-cooled shipments of oranges moving prior to establishment of a specific tariff charge therefor.*

Before the merits of the contentions of complainants in this respect are considered we must determine whether the claim for reparation as to such shipments was seasonably filed. The issues in the original complaint were four: The reasonableness of the lemon rate; of the orange rate; of the charge for standard refrigeration; and the legality of the precooling charge. There was no allegation in the original complaint that the assessing of standard refrigeration charges on precooled shipments of oranges was in violation of tariff provisions. These shipments were made prior to the publication of the precooling charge of \$30. Statements of these shipments were filed at the original hearing begun March 23, 1910. The mere filing of statements showing details of shipments does not serve to amend the pleadings; and that issue never having been properly raised, we hold that the statute of limitations was not tolled and the claims are therefore barred.

We affirm our previous holding that complainants have not shown themselves entitled to an award of damages, and the petition for reparation stands denied.

45 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET NO. 965.

C. F. A. CLASS SCALE CASE.

Submitted May 22, 1917. Decided June 29, 1917.

Proposed new system of class and commodity rates in central freight association territory found not justified, but a modification thereof suggested. Suspended schedules required to be canceled.

J. L. Minnis, W. W. Collin, jr., and Ernest S. Ballard for respondents generally.

John C. Bills, W. K. Williams, and H. S. Bradley for Michigan lines.

H. C. Barlow for Chicago Association of Commerce.

H. G. Wilson for C. F. A. Cities Rate Readjustment Committee and Traffic Bureau of Toledo Commercial Club.

J. Keavy for Indianapolis Chamber of Commerce.

D. F. Hurd for C. F. A. Cities Rate Readjustment Committee and Cleveland Chamber of Commerce.

Charles S. Williams for Mansfield Chamber of Commerce.

R. M. Robinson for Greater Dayton Association.

Guy L. Cory for Springfield Traffic Association.

R. R. Hargis for Indianapolis Board of Trade.

Donald O. Moore for Pittsburgh Chamber of Commerce.

G. M. Freer for Cincinnati Chamber of Commerce.

Frank E. Williamson for Buffalo Chamber of Commerce.

L. B. Boswell for Quincy Freight Bureau.

C. S. Bather for Manufacturers & Shippers Association and Federation of Furniture Manufacturers, Rockford, Ill.

Hal H. Smith for Michigan Manufacturers' Association and Saginaw Board of Trade.

John C. Graham for Jackson Chamber of Commerce.

Harris E. Galpin for Muskegon Employers' Association.

John T. Ross for Saginaw Board of Trade and Bay City Board of Commerce.

Herman Mueller for Lansing Chamber of Commerce.

F. M. Elkinton and H. N. McEwen for Manufacturers' Association of Sheboygan, Wis., Manitowoc Chamber of Commerce, Two Rivers Commercial Club, Green Bay Association of Commerce, Marinette Civic & Industrial Association, Menominee Commercial Club, and Cheese Shippers Traffic Association.

Ernest L. Ewing for Cadillac Lumber Exchange.

Clifford Thorne for Western Oil Jobbers Association.

A. C. Owen for Swift & Company.

Luther M. Walter for Morris & Company.

F. W. Boltz for National Petroleum Association.

F. E. Paulson for Lehigh Portland Cement Company.

Frank A. Larish for Michigan Paper Mills Traffic Association.

Jeffery & Campbell for National Association of Box Manufacturers.

R. D. Sangster, W. J. C. Kenyon, E. J. McVann, and C. E. Childe for commercial traffic organizations of the Missouri River cities.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

A tentative report in this case was prepared by the examiner and served upon the parties before argument.

In our first report in *The Five Per Cent Case*, 31 I. C. C., 351, we found among other things that the class rates in central freight association territory were on a lower scale than prevailed elsewhere in the country, and upon all the facts of record held that the carriers were entitled to the increases sought and possibly more. It was pointed out that the existing class-rate structure was "honey-combed with inconsistencies" and it was suggested that a general readjustment would be desirable.

Shortly after our decision was announced the carriers set to work upon a general revision of the rates, and after about two years' work on the part of a specially selected official and clerical force they here put before us for approval a new system of rates. It includes not only class rates but also some commodity rates which for the most part are those that are based upon definite percentages of certain class rates. The commodities which are accorded rates based upon percentages of certain class rates are shown in Appendix No. 1 to this report. The proposed new system of rates is designed to yield the carriers greater revenue and to remove some of the inconsistencies that exist in the present rate structure. The schedules were filed to become effective generally on December 1, 1916, but have been suspended until September 30, 1917, and later dates. The tariffs containing these new schedules, by special permission of the Commission, do not comply with all the requirements as to construction, printing, etc. In their present shape they are not suitable for general use. They have been filed in the rough, so to speak, solely for the purpose of avoiding the expense incident to a more detailed compilation and a large amount of printing, which it was felt was unjustified until it should be known whether the general basis for the new rates was acceptable to the Commission. The understanding is

that the suspended tariffs will be canceled and that new tariffs naming such rates as the Commission finds justified will be filed, which will conform to the Commission's rules and regulations.

This case has no particular connection with *The Fifteen Per Cent Case*, 45 I. C. C., 303, wherein the carriers throughout the country sought a general increase of 15 per cent in their rates. So far as the lines in central freight association territory are concerned, that increase was asked in addition to, and built upon, the rates here under suspension. In other words, this case is based solely upon conditions as they existed before the effects of the European war and the act of September 3, 5, 1916, familiarly known as the Adamson law, were felt by the carriers.

This case is of particular importance not merely because it involves all the class rates and all the commodity rates based on a definite percentage of class rates in central freight association territory, but also because it is the purpose of respondents to make the proposed rate structure the foundation for practically all future rates in this territory. That is, they intend eventually to do away with such commodity rates as are deemed unnecessary and to base most of the others on certain percentages of class rates. It would amount to substantially the same thing as having a large number of classes and few commodity rates.

The initials "C. F. A." will hereinafter be used instead of the words "central freight association." Rates are stated in cents per 100 pounds.

Considerable sentiment was manifested among the shippers at the hearing in favor of permitting the carriers to have the increased revenue which would be yielded by the rates here under suspension. This was probably due to the fact that many persons had no doubts that the carriers should have some assistance in view of the unusual conditions confronting them. It is probable that there would have been more opposition to the level of the suspended rates had the proposal for the general increase of 15 per cent taken definite shape before the hearing in this case was concluded. The primary purpose of the new tariffs is to secure increased revenue. While that is the matter of greatest interest to the carriers, the principal concern of the protestants is in the matter of rate relationships. Some disturbance of relationships is of course to be expected where an old scale of rates is replaced by a new and differently constituted scale. Particularly pronounced are the objections to the proposed rates on the part of localities which now enjoy rates designed to relieve them of some of their disadvantages of location, and which are here called upon to pay rates made with a greater regard for distance and transportation conditions generally.

A considerable amount of evidence was adduced by respondents to confirm what was said in *The Five Per Cent Case* about the low level of the present rate structure and the inconsistencies or inequalities therein, and to establish beyond all question of doubt that the present rate structure needs revision.

The class rates in C. F. A. territory, with the exception of those to and from most Michigan points, are founded upon a distance scale. The rates to and from Michigan points are generally on a higher basis than they would be if the scale were used. The scale is not on file with the Commission, but is merely the basis for constructing the published rates. As to their level or intrinsic reasonableness it is shown by respondents that the present scale is substantially lower than any of 16 other scales in use in this country. A number of these scales with which comparison is made are used in the west and southwest and may naturally be expected to be higher than that in C. F. A. territory; but the other scales apply in Michigan, New England, Pennsylvania, Illinois, Iowa, and Wisconsin, where traffic and transportation conditions are known to be more nearly comparable with conditions in the territory in question. We show in Appendix No. 2 some of the comparisons offered by respondents. Comparisons are also made in this appendix with rates in the proposed scale, but we will deal with them later in the report. It must be borne in mind that there are differences in the methods or rules used in applying these scales to distance and arriving at the actual rates between given points, which in some cases would alter the showing made. Published rates between specific points, fully representative of the situations in the respective territories, rather than the scales upon which the published rates are based, would have afforded a fairer basis for comparison.

The present published rates on all classes and for all distances in C. F. A. territory, with the exception of some of those to and from Michigan points, are, as a rule, less than for hauls of equal length in eastern trunk line and New England territories. Extracts from comparisons offered in evidence by respondents are shown in Appendix No. 3. The rates used in making the comparisons are said to have been selected at random. They do not include rates between Michigan points and the balance of C. F. A. territory. Similar comparisons offered in evidence by respondents, including rates to and from Michigan, of course, show less difference.

Before the civil war the legislature of the state of Ohio enacted a statute which provided that for rail hauls of 30 miles or more within the state the rate for the transportation of property, with certain exceptions not necessary to mention here, should not exceed 5 cents per ton per mile. This statute had the effect of making the rates on

the first three classes for various distances, but principally for short hauls, less than they would have been under a strict observance of the C. F. A. scale.

The statutory basis for a distance of 30 miles resulted in a rate of 7.5 cents per 100 pounds, and that rate under a decision of the Ohio supreme court became the maximum for distances less than 30 miles. It has depressed the first-class rates for distances up to 100 miles, the second-class rates for distances up to 45 miles, and the third-class rates for distances up to 30 miles. The rate depressions thus brought about in the state of Ohio have spread, through the action of competitive forces, to other states in C. F. A. territory and have become a part of and affected more or less the whole scale. The present rates in C. F. A. territory for distances of 475 miles, which is the distance used in publishing rates between Chicago and the western termini of the eastern trunk lines, are based on 60 per cent of the Chicago-New York rates. These rates are graded down and the rates fixed by the Ohio statute are graded up until the two meet. The statute referred to was repealed about two years ago, but its effects still remain. In 1914 an increase of 5 per cent was made in all the rates, the rate for a 30-mile haul becoming 7.9 cents.

The rates for the various distances in the present scale are not always as logically progressed as they might be. The scale is divided into mileage blocks, but the rates often do not change with the blocks. For instance, although there are five blocks between 45 miles and 65 miles, inclusive, the fifth-class rate does not change, and while there are four blocks between 95 miles and 120 miles the second-class rate for all those blocks is the same. The rates for the various classes do not bear any fixed or logical relation to each other. For instance, in one case the second-class rate may be equal to the first-class rate and in another case 85 per cent of the first-class rate. The present scale and its illogical characteristics are shown as Appendix No. 4.

While, as stated, specific rates are published based upon the distance scale, they are, because of the illogical characteristics in the scale and because of the numerous deviations from that scale in publishing tariffs, not as harmonious as they might be. Rates between given points often are not the same in both directions, and rates for a given distance are found to vary widely. Many points, for purely commercial reasons, are given rates less than their distances warrant, while others are charged according to scale.

We need not go further into details. Suffice it to say that respondents have demonstrated that the present system of rates in C. F. A. territory should sooner or later be replaced by a more scientific rate structure; but it must be such an improvement as will warrant

the disturbances which it will entail. We shall proceed to examine the new adjustment proposed by the carriers in the tariffs under suspension.

Owing to differences in traffic and transportation conditions, hereinafter to be considered, respondents in the first place propose to divide C. F. A. territory into three separate sections or zones, and to use three separate scales of rates. The principal zone embraces all the territory on and south of the line of the Michigan Central Railroad from Chicago to Detroit, through Kalamazoo and Jackson, Mich., and will be hereinafter referred to as zone "A." The two other zones are in Michigan and are to be known as zones "B" and "C." Zone B lies immediately north of zone A and is bounded on the north by a line running from Muskegon, on the east bank of Lake Michigan, eastwardly across the state through Greenville, Edmore, Alma, Saginaw, Midland, Bay City, and Sandusky, Mich., to Lake Huron. Within this zone are also included such points as Grand Rapids, Lansing, Flint, and Benton Harbor. Zone C lies directly north of zone B and includes the remainder of the southern peninsula of Michigan. The northern peninsula of Michigan, with the exception of the cities of Menominee and Manistique, is not in C. F. A. territory. Some of the principal points in zone C are Mackinaw City, Traverse City, Cheboygan, Cadillac, Gaylord, Alpena, Manistee, and Big Rapids. Zone C also embraces, via car-ferry routes, the west bank Lake Michigan ports north of Milwaukee, Wis., viz, Sheboygan, Manitowoc, Kewaunee, Green Bay, Two Rivers, and Marinette, Wis., and Menominee and Manistique, Mich. They are in zone C because the traffic moves through that part of Michigan which is in zone C, and via the ports of Ludington and Frankfort. The map designated Appendix No. 11 shows this division of the territory together with subdivisions of zone A to be noted later. Respondents propose one scale of rates for general use within zone A, but two higher scales for making rates to apply between zones B and C, respectively, on the one hand, and zone A on the other. For instance, the zone A scale is to be applied from Cincinnati to Toledo, Ohio, the zone B scale from Cincinnati to Lansing, Mich., and the zone C scale from Cincinnati to Alpena, Mich.

We will deal first with the zone A scale, which appears as Appendix No. 5. Up to and including a distance of 25 miles, this scale is divided into 5-mile blocks. Beyond that, to and including 55 miles, it is divided into 10-mile blocks. Thence, up to and including a distance of 100 miles, 15-mile blocks. For distances of over 100 miles, to and including 200 miles, it is divided into 20-mile blocks, while for greater distances 25-mile blocks are used. The mileage blocks in the proposed scale are larger than in the present scale, but that is offset to some extent at least by the fact that in

the proposed scale the rates generally change with every block while in the present scale they are often the same for two or more blocks. The scale is mainly for use in connection with distances which do not exceed 475 miles, the Chicago-western termini distance. By using 27 mileage blocks up to and including that distance respondents were able to start with a sixth-class rate of 3 cents and by progressing it uniformly at 0.5 cents per block reach the desired sixth-class rate for a distance of 475 miles, viz, 16 cents. A higher rate than 16 cents would have interfered with the rates between Rochester, N. Y., and Chicago, and any greater number of mileage blocks would have necessitated progressing by fractions other than halves or sometimes using the same rate for more than one block.

For reasons not fully disclosed, respondents did not feel free to make substantial increases in the fifth and sixth class rates. Therefore, in constructing the scale, they began with the sixth-class rate as a base so that they would be better able to keep control of the figures for the lower classes and avoid heavy increases and severe disturbances. They started with 3 cents per 100 pounds as a reasonable sixth-class rate for 5 miles and less. That had been the sixth-class rate prior to the 5 per cent increase made in 1914. To arrive at the sixth-class rates for distances greater than 5 miles, one-half cent was added for each successive mileage block. If $2\frac{1}{2}$ cents instead of 3 cents had been taken as the sixth-class base rate for 5 miles, a progression of one-half cent for each mileage block would have brought about radical reductions in the present rates for the greater distances, while if $3\frac{1}{2}$ cents had been used, the increases for the greater distances would have been more than the carriers were inclined to propose. The first-class rate for 5 miles was fixed at 11 cents, as that seemed reasonable compared with first-class rates of 11.6 cents in Michigan, 10.5 cents in Illinois for one-line hauls, 10 cents in New England zone A, and 12 cents in New England zone B.

Following what appeared to be the prevailing practice, the second-class rate was made 85 per cent of the first class, or 9.5 cents. The third-class rate, largely as a matter of compromise, was fixed at 7 cents, or 0.4 cents less than in the present C. F. A. scale. Temporarily skipping fourth class, the fifth-class rate was arbitrarily made 4 cents, which was the rate prior to the 5 per cent increase and happened to be 130 per cent of the sixth-class rate. The fourth-class rate was then made 165 per cent of sixth class, or 5 cents, which was 1 cent less than that in the C. F. A. scale prior to the 5 per cent increase. The rates for 5 miles were then seen to be related to the sixth-class rate according to the following per cents:

Classes.....	1	2	3	4	5	6
Per cent of sixth class.....	375	315	240	165	130	100

Having arrived at the sixth-class rates for all distances in accordance with the foregoing rule of progression, the rates for higher classes in each mileage block beyond the first block to and including the 200-mile block were uniformly based upon the above percentages of the sixth-class rates. If the above percentages had been used for distances of "475 and over 450" miles, the resulting rates, when applied between Buffalo and Chicago, would not have cleared the existing rates between Rochester, N. Y., and Chicago. For instance, the first-class rate between Buffalo and Chicago would have been 60 cents, whereas the existing first-class rate from Chicago to Rochester is 58.3 cents, and from Rochester to Chicago, 55.2 cents. In order to avoid this difficulty, the percentage relations observed in the scale for all distances over 450 miles were as follows:

Classes.....	1	2	3	4	5	6
Per cent of sixth class.....	320	272	216	146	120	100

This arrangement resulted in a first-class rate of 51 cents for the distance between Chicago and Buffalo, and prevented a violation of the long-and-short-haul rule. For distances of over 200 miles to and including 450 miles, no definite percentage relations to sixth-class rates were observed, but the spread in the rates between the 200 and the 450 mile blocks was distributed ratably over the intervening blocks. Appendix No. 8 shows the percentage relation which each class in the scale bears to the sixth-class rate for each distance. During the hearing of the case, the C. F. A. lines corresponded with the eastern trunk lines and were advised that the latter would be willing to increase the rates between Rochester and Chicago to an extent necessary to accommodate such rates between Buffalo and Chicago as might result from the C. F. A. lines being permitted to modify their scale so as to make the rates for all distances up to and including 475 miles in accordance with the percentages used in the proposed scale for distances up to and including 200 miles. They say that the depression of the scale on account of the Rochester rate was merely a temporary measure, and that they eventually intended to progress their scale according to the percentages used up to 200 miles. On that basis the Chicago-Buffalo first-class rate would become 60 cents. In Appendix No. 2 the proposed zone A scale will be found compared with other scales previously referred to.

The zone B scale is made one-half cent higher on sixth class than the zone A scale, and the zone C scale 1 cent higher on sixth class than the zone B scale. The rates on the higher classes in both of the scales are based upon the sixth-class rates, substantially as in the zone A scale. Upon the whole the zone B scale is probably about 5 per cent higher than the zone A scale and the zone C scale about

8 per cent higher than the zone B scale. The zone B and zone C scales, respectively, are shown in Appendixes 6 and 7.

The arbitrary degrees of progression for increasing distances seen in the rates for the very long hauls were adopted for the purpose of finally reaching rates for the Chicago-New York distance, somewhat more than 900 miles, which would not be less than the Chicago-New York rates. The Chicago-New York rates are as follows:

Classes	1	2	3	4	5	6
Rates.....	78.8	68.3	52.5	36.8	31.5	26.3

There is no distance in C. F. A. territory for which the rates shown for the Chicago-New York distance could be used. Most of the distances in C. F. A. territory are within 500 miles.

While the same scales apply for hauls over two or more lines as for hauls over a single line, it will later be seen that because of the use of the base point system the actual rates to or from most local points on hauls involving more than one line are greater to the extent of one or more mileage blocks than they would be for the same distances on a one-line haul where the scale is strictly applied.

It should be understood that these scales are not published in tariffs, but are merely the bases used in constructing the published rates.

The carriers did not undertake to compute distances between all points in C. F. A. territory for use in applying the scales. That, it is said, would have been an enormous task and, from a practical standpoint, not worth the time and expense required to perform it. The distances that were computed totaled about 400,000 in number and required the work of a large clerical force for several months. Distances were computed between all points on the same road and between a large number of so-called basing points on different roads. The basing points comprise most of the common or junction points in C. F. A. territory and a number of local points, including all branch-line termini.

In computing the distances the shortest workable route in each case was ordinarily used and the distances thus obtained were employed in arriving at rates for the longer routes between the same points. However, in some cases certain other considerations which were deemed to be controlling prompted the use of routes other than the short routes as bases for computing the distances. For instance, if the short route involved a two-line haul it was not used if either of the lines composing it had a longer but reasonably direct route of its own between the points. This exception was based upon the provision in section 15 of the act to the effect that a carrier may not be compelled to open up a through route that would deprive it of the long haul. This exception was not made in a case like the one just

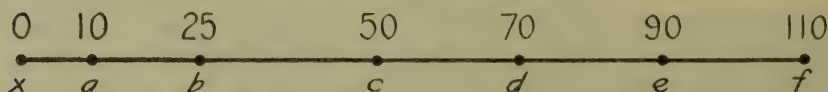
referred to if divisions were already in effect via the two-line route, in other words, in a case where a carrier voluntarily short hauled itself. In computing distances for three-line hauls any intermediate line was used in determining the short route, except that no such route was used which would involve short hauling one of the carriers therein unless divisions were already in effect. Routes via two or more different lines in the same railway system were given preference over routes via roads having no corporate connection with each other, and practicable routes which a shipper would expect to use were of course taken in preference to unused or theoretical routes.

These were the general rules observed by the carriers in determining distances. They of course found special cases where the application of these rules was not practical. The distances when determined were put through several processes of verification, and respondents contend that there is little room for questioning the accuracy and fairness of their work. Their working sheets showing how distances between all the points were computed were kept in the hearing room and open to the inspection of shippers. Their papers were freely consulted by shippers, but only a few differences between shippers' figures and carriers' figures have been brought to our attention. The carriers found the distance between Cleveland and Fruit Dale, Ohio, to be 203 miles, which is that via the Cleveland, Cincinnati, Chicago & St. Louis Railway to Springfield, Ohio, and thence via the Detroit, Toledo & Ironton Railway. One of the protestants says that by using the former road to Columbus, Ohio, then the Baltimore & Ohio Southwestern to Washington Court House, Ohio, and then the Detroit, Toledo & Ironton, it can arrive at a distance of 196 miles. The shorter distance computed by the protestants would throw the rates into the "200 and over 180" mile block and make them less than if a distance of 203 miles is used. The difference is $1\frac{1}{2}$ cents on the first three classes and one-half cent on the last three classes. In this instance we are not prepared to say that the distance used by respondents was improper. There are a few differences between the shippers' figures and the carriers' figures as to distances between Lansing, Mich., and several other points, which differences were not explained at the hearing. From time to time various differences may develop; respondents are willing to correct any errors that may be brought to their attention, but may prefer to go to trial in cases where they are not convinced that the shippers have used reasonable routes in their computations.

We have discussed the proposed scales and the methods of arriving at distances. We shall now see how the two were used in determining the actual rates between given points. For one-line hauls of distances up to and including 70 miles the scale is strictly applied,

that is, in accordance with actual distance. But actual distance is not applied via one-line hauls of more than 70 miles or for hauls of any length over two or more lines, except between basing points. In the two latter cases rates between the various basing points are arrived at by applying the scale in accordance with actual distance, and the rate to or from any intermediate point is the same as the rate to or from the basing point next beyond—no matter how far beyond. The application of the scale can possibly be better understood from the diagram shown below and the explanation which follows:

One-line haul.



x is a point of origin.

The figures above the horizontal line denote the distances in miles from *x*.

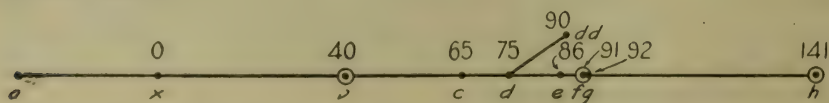
a, *b*, *c*, and *d* are local points of destination within 70 miles of *x*. To these points of destination the scale is strictly applied.

f is a junction point with a connecting line, which may be 110 miles from *x*. It is a basing point, and under the carriers' rule of application is the first point beyond *d* to which a rate is published in accordance with the scale and distance.

e is a local point between *d* and *f*, which under the carriers' rule takes the same rate as *f*; viz, the rate for "120 and over 100" miles. If the scale were applied in accordance with distance, *e* would be given the rate for "100 and over 85" miles. This situation represents what protestants call an "inflation."

Except as to cases where it would interfere with group and base point rates, respondents have agreed to amend their tariffs and for single line distances of over 70 miles to not apply the *f* rate to *e*, if it results in charging *e* with more than is provided by the scale for that distance.

A diagram illustrating the situation on a two or three line haul appears below:



x is a point of origin.

The figures above the horizontal line denote distances in miles from *x*.

b, f, and h are basing points at junctions with connecting lines.

d and dd are local basing points on the line of the second carrier and distant 75 miles and 90 miles, respectively, from x. dd is also the terminus of a branch line. These are the first points beyond b, to which, under the carrier's rule of application, a rate is published in strict accordance with the scale.

The basing points f and h are, respectively, 91 miles and 141 miles from x, and are the only points beyond d to which, under the carrier's rule of application, the scale is strictly applied.

c, e, and g are representative local points between basing points and distant, respectively, 65 miles, 86 miles, and 92 miles from x. In each case they take the rate applicable to the base point beyond, viz, d, f, or h, regardless of what the scale provides for their respective distances. There would be no "inflation" at c or e, but there would be at some points between b and c, and at some points between d and e, because the distances exceed one mileage block. There would also be "inflations" at some points between f and h. It will be observed that the distance between f and h is 50 miles, and that g, but 1 mile beyond f, is charged the rate applicable to h, which is that for "160 and over 140" miles. If the scale were strictly applied, there would be three breaks in the rates at points between f and h; that is, there would be rates for points "100 and over 85" miles, "120 and over 100" miles, and "140 and over 120" miles. If x, the point of origin, does not happen to be a basing point, there is a further "inflation" in each of the cases referred to, because x would take the rate applicable from a, a basing point, just as e takes the rate applicable to f; and the rate from any point between a and b to any point between b and d would be the rate from a to d.

When the rates to two near-by basing points are the same the points between them take the same rates as the basing points.

These rules or methods, with some modifications, were used generally in constructing the proposed rates, and, as will later appear, the group system of rate making was also employed. The rates at present in effect, and which generally have been in effect for many years, except for the 5 per cent increase made in 1914, were made in substantially the same manner. However, the "inflations" in the present rates are said by respondents to be more numerous and more marked than they are in the proposed rates. To publish to and from every point in C. F. A. territory rates strictly according to scale and distance would necessitate the compilation of hundreds of thousands of additional distances, and would result in voluminous and complicated tariff publications. The "inflations" in the proposed rates occur principally on two and three line hauls, and in most cases probably do not result in higher rates than would have resulted had

the carriers strictly applied the scale between all points and followed either the practice of adding a differential for hauls over two or more lines or the practice of charging the combination of the locals of each line.

Points between which there is a large movement of traffic are generally basing points, while the points at which the "inflations" appear are generally local stations which do not ship or receive a large tonnage. The "inflations" are of course more marked and more prevalent where the distances between basing points are of considerable length than where such distances are comparatively short. C. F. A. territory is so covered by the network of railways that in many cases the distance between base points does not exceed the distance included in one mileage block of the proposed scale. However, to meet the objections made by some of the protestants, the carriers, except as to traffic to and from Michigan, have no great objection to a requirement by the Commission that they establish an additional basing point wherever the distance between the basing points now used in applying the proposed scale is 25 miles or more. The establishment of such new basing points would increase the proposed rates in some cases, and decrease them in others, and on account of the long-and-short-haul rule might cause the closing of certain routes, but it would result in the elimination of many of the "inflations" found in the proposed rate structure. Respondents say that it would be wholly impracticable to adopt an absolutely rigid distance scale in C. F. A. territory.

Reference should now be had to the map designated Appendix No. 11. For the purpose of further explaining the manner in which the scales were used in arriving at and publishing the actual rates between specific points, we may consider C. F. A. territory as divided into four parts. First, the central district, comprising substantially all of Ohio and Indiana. Second, the eastern district, which covers eastern and southeastern Ohio and the western parts of New York, Pennsylvania and West Virginia, and northeastern Kentucky. This district embraces several groups, shown by cross-hatching and stippling on the map, the principal ones being the Buffalo group and the Pittsburgh group, marked "D" and "P," respectively. The third is the northern district, embracing all of the southern peninsula of Michigan and the west bank Lake Michigan ports north of Milwaukee to and including Manistique. The fourth is the western district, subdivided into a number of groups and embracing most of the state of Illinois and points on the west bank of the Mississippi River, St. Louis, Mo., to Dubuque, Iowa, inclusive.

Between points within the central district the zone A scale was applied, the basing points used being those shown by large dots on the plain white portion of the map.

The eastern district, for the purpose of determining the rates to be applied between points within that district, was subdivided into groups. The zone A scale was used and care taken to blend the rates into those applying in eastern trunk line territory.

Between points in the eastern district, on the one hand, and points in the central district, on the other, the zone A scale was applied. As the eastern district is somewhat of a "buffer state" between C. F. A. and trunk line territories special treatment seemed necessary in order to "dovetail" the different rate structures. The distances between Buffalo and the base points in the central district were ascertained, and, whether one or more than one road was interested in the haul, the scale was applied thereto and intermediate points given the base point rates. As a rule the Buffalo rates were applied to and from all points in the Buffalo group.

The same method was used in determining rates between the Pittsburgh and the Youngstown groups, on the one hand, and points in the central district, on the other. Rates to and from Rochester, N. Y., not directly involved in this case, affected the rates to and from the Buffalo and the Pittsburgh groups. Southwest of the Pittsburgh group is what we may call the Hopedale group. The rates were ascertained between central district basing points, on the one hand, and the western border of the Hopedale group and Pittsburgh, respectively, on the other, in accordance with the scale, and rates to and from the Hopedale group were made halfway between those rates. Points in the groups along the Ohio River in the lower part of the eastern district were considered together and rates based upon an average of the distances were applied. Portsmouth, Ohio, in one of these groups, seems to suffer some inflations, probably because it is grouped with Ironton, Ohio, and Kenova, W. Va., farther distant points. The rates between central district basing points and Charleston, W. Va., in accordance with an established basis, were made on a distance of 25 miles over the distances used in arriving at rates to the Ohio River groups. Between points in the central district and points in the eastern district not in any specific group, and in cases where the haul was less than 150 miles, the rates were made in substantially the same manner as between points within the central district, subject, however, to Buffalo, Pittsburgh, or Youngstown rates as maxima.

Next is the northern district, which embraces zones B and C and that part of zone A which lies north of the southern boundary of the state of Michigan. Distances were computed between the basing points in this district designated by large dots and basing points or groups in the central and eastern districts, as shown in Appendix No. 12. The rates between those points were published according

to scale, except that those to and from the west bank Lake Michigan ports north of Manitowoc, were generally based on differentials over the Manitowoc rates. The basing points shown in this appendix north of the east and west line, shown on the map, running through the middle of the central district comprehend most of the common or junction points in that section, but south of the line there are a number of common points which are not basing points in so far as rates to and from the northern district are concerned. This arrangement has the effect of making larger rate blankets in the section south of the line than in the section north of the line and consequently more "inflation," if we consider specific rates.

We will deal now with the western district. This district may be subdivided by a line drawn from a point near Chicago along the west side of the Wabash Railway to Forrest, Ill., thence along the north side of the Toledo, Peoria & Western Railway to Peoria, Ill., and thence along the Illinois River to its junction with the Mississippi River at a point just west of Alton. The line is shown on the map. The portion of the district lying east and south of the line is divided into several groups bearing Nos. 103 to 120. These groups are used only on traffic to and from Buffalo and Pittsburgh territory and are substantially the same as are used in making rates to and from points immediately east of Buffalo and Pittsburgh in eastern trunk line territory. Buffalo and Pittsburgh take the same rates to and from these Illinois groups, and the rates are not based on the C. F. A. scale. In arriving at the respective class rates for each of the percentage groups referred to, the sixth-class rate to each percentage group from New York City was obtained and the usual percentage for arriving at rates between the western termini of the eastern trunk lines and each of the percentage groups referred to was then applied. The rates for the five other classes were obtained by applying the same percentages to the sixth-class rate as were employed for the "475 and over 450" mile block of the zone A scale. The maintenance of the parity of rates as between Buffalo and Pittsburgh territories necessitates some departures from actual distance, Pittsburgh being charged generally in excess of what its distance would entitle it to, and Buffalo less than its distance would warrant.

In that part of Illinois covered by these groups are a number of basing points shown on the map by large dots, which are used in making rates to and from points in the central and northern districts shown by large dots in Appendix No. 13. Distances were computed between these base points and scale A, B, or C applied, according to the location of the basing points in the central or northern districts.

The basing points in Illinois were not used for short hauls to and from points in Indiana, the zone A scale being applied in the usual manner.

In the southern part of Illinois will be seen the St. Louis and Cairo groups, marked S and E, respectively. The distances between St. Louis and Cairo, on the one hand, and points or groups in the central, eastern, and northern districts, on the other, were determined and the respective scales applied, St. Louis rates being blanketed over the St. Louis group and Cairo rates over the Cairo group.

The portion of the western district lying west and north of the line from Chicago through Peoria to the Mississippi River, above described, is dominated by the western trunk lines, and is not, strictly speaking, a part of C. F. A. territory. As will be noted from the map appearing as Appendix No. 11, it is divided into groups bearing Nos. 1 to 10, the bases for rates to and from which we shall now proceed to explain.

The rates to and from the Quincy group shown on the map as No. 1 are made the same as, or with relation to, the rates to and from St. Louis.

The rates to and from the Burlington or the upper Mississippi River crossings group, shown as No. 2, are made with relation to the St. Louis rates.

The rates to and from the Rockford group, shown on the map as No. 3, and to and from the Freeport group, shown as No. 4, were made on the basis of certain arbitraries adopted pursuant to the decision in *Chamber of Commerce of Freeport, Ill., v. Ry. Co.*, 33 I. C. C., 673.

Rates to and from the Sycamore group, or group No. 5, were made by taking, to represent the difference in distance, 65 per cent of the difference between the rates to and from Chicago and to and from Rockford, and adding that difference to the Chicago rates.

Rates to and from the Aurora-Elgin group, shown as No. 6, were made by adding to the Chicago rates one-half the difference between the Chicago and the Rockford rates, observing the Streator rates as maxima.

Rates to and from the La Salle group, designated No. 7, were made substantially the same as the rates to and from Peoria, except for short hauls.

Rates to and from the Streator group, shown as No. 8 on the map, are generally made the same as the rates to and from competitive and adjacent groups to the west and south.

Rates to and from the Seneca group, shown as No. 9, are very largely the same as the rates to and from the Streator group, except as to short hauls, where the rates are graded to produce a proper alignment with adjacent groups.

The Illinois intrastate rates were generally observed as minima to and from these Illinois groups.

Rates between the Illinois points and eastern trunk line territory in some cases affect the rates between the Illinois points and points west of the Buffalo-Pittsburgh zone.

The Chicago rates are applied to and from points in the Chicago group. It is practically a part of the central district.

The rates to and from the Milwaukee group, designated by the letter M, are based upon differentials over the Chicago rates.

Generally speaking, the rate groups shown on the map are the same as are observed in the present adjustment.

This concludes the description of the methods used in applying the several scales.

The percentages of the increases or decreases in the actual rates hereproposed between 12 important cities and 46 representative points, all in zone A, as shown in a table compiled by respondents, appear below:

	Per cent of increase or decrease.						
	1	2	3	4	5	6	For all classes.
Buffalo, N. Y.....	8.7	7.2	10.9	8.3	3.4	5.7	7.4
Chicago, Ill.....	11.1	6.7	8.6	8.6	3.4	.2	6.4
Cincinnati, Ohio.....	10.5	7.2	6.2	8.6	3.6	.2	5
Cleveland, Ohio.....	8.7	6.7	7.8	7.7	4	6.2	6.8
Columbus, Ohio.....	11.1	8.3	5.8	6	1.5	-----	5.1
Fort Wayne, Ind.....	9	5.9	4	3	2.9	-----	4.1
Indianapolis, Ind.....	11.1	8	6.2	7.9	4.4	.3	6.3
Louisville, Ky.....	6.3	4.9	6.5	8.9	.6	1.3	4.5
Peoria, Ill.....	5.2	4.1	7.7	8.8	12.1	.1	4
Pittsburgh, Pa.....	5.7	5.4	7.5	6	.8	1.1	4.2
St. Louis, Mo.....	3.4	3.2	6	2.9	1.1	4.4	3.3
Toledo, Ohio.....	10.3	7.6	6.2	7.3	2.3	.2	5.6

¹ Decrease.

The percentages of the increases or decreases in actual rates between 10 important cities in zone B and 55 representative points in the remainder of C. F. A. territory, are shown by respondents to be as follows:

	Per cent of increase or decrease.						
	1	2	3	4	5	6	For all classes.
Alma.....	10.4	7.9	11.4	14.0	4.4	1.9	8.3
Benton Harbor.....	10.9	8.6	10	11.8	4.5	1.4	7.8
Big Rapids.....	8.3	5.6	8.4	6.9	1.5	1.3	4.8
Detroit.....	8.8	8.4	7.1	8.6	5.7	4.5	7.1
Flint.....	10.1	7.8	10.4	11.2	4.5	1.4	7.6
Grand Rapids.....	8.9	6.8	9.4	10.3	3.2	.8	6.6
Greenville.....	9.9	7.4	10.9	11.8	4.3	1.8	7.7
Lansing.....	10.7	7.9	10.3	11.7	4.5	1.1	7.5
Muskegon.....	12.2	10.1	13.8	14.6	7.6	5.4	10.5
Bay City-Saginaw.....	15.3	10.1	15.6	15.2	7.7	9.2	12.2

¹ Decrease.

The following is a statement offered by one of the protestants showing the percentages of the increases or decreases from Michigan points in zones A and B to 27 representative points in C. F. A. territory:

From—	Zone location.	Per cent of increase or decrease.						For all classes.
		1	2	3	4	5	6	
Bay City-Saginaw.....	B	15.9	13.0	16.9	17.9	10.2	8.1	14.4
Battle Creek.....	A	2.5	.7	2.4	1.4	¹ 1.0	¹ 3.6	.7
Benton Harbor.....	B	13.8	11.2	13.0	14.2	6.6	3.8	11.5
Detroit.....	A	11.7	9.0	10.4	10.2	6.6	7.4	9.8
Flint.....	B	12.0	9.6	10.7	13.2	6.0	3.7	10.0
Grand Rapids.....	B	9.3	7.0	9.3	9.5	3.8	2.1	7.6
Jackson.....	A	2.3	0.0	1.2	1.1	¹ 3.9	¹ 4.3	.2
Kalamazoo.....	A	2.2	.5	3.2	1.6	¹ 3.7	¹ 3.3	.8
Lansing.....	B	11.1	8.7	10.6	11.3	5.3	3.6	9.2
Muskegon.....	B	13.2	10.7	13.1	14.6	9.0	7.6	11.9
Points in zone.....	A	3.0	2.5	4.3	3.5	¹ 1.4	¹ 1.1	2.8
Do.....	B	12.5	10.0	12.3	13.5	6.8	4.9	10.8

¹ Decrease.

It will be noted from the above tables that throughout C. F. A. territory the heavier increases are, generally speaking, in the first four classes. The fifth and sixth class rates on which the great volume of revenue-producing traffic moves are as a rule only slightly increased and in some cases reduced. The heavy increases appear at such points as Buffalo, Bay City, Saginaw, Muskegon, Flint, and Detroit, which, under the present adjustment, are given rates less than would apply if distance were always given full recognition. In other words it is the removal of the discriminations and not the proposal for a higher basis of rates that results in the more marked increases at these points. There is nothing in the record which would give us any definite indication as to what proportion of the carriers' total freight revenue is derived from the rates here involved; it differs considerably with each road; upon the whole it is probably not over 20 or 25 per cent. There is no protest against the level of the rates to and from zone C. The proposed rates to and from that zone for the most part represent reductions.

We have seen that the present C. F. A. scale starts with a first-class rate of 7.9 cents for 5 miles. The first-class rate for that distance under the proposed scale is 11 cents. Respondents contend that even this rate is too low. Short-haul traffic, particularly in less than carloads, is generally believed to be handled at comparatively low rates. After the scales here under consideration had been adopted by the carriers they undertook to make a study of the ascertainable direct terminal costs. The Cleveland, Cincinnati, Chicago & St. Louis Railway, the Wabash Railway, and the Pennsylvania lines were selected as typical lines, and less-than-carload traffic at large cities and small stations for representative periods was observed. These

costs varied considerably, but, as computed by the carriers, averaged between 8 and 12 cents per 100 pounds for the two terminal services rendered on each shipment. The costs were found to be greater in the large cities than at the small stations. The figures do not include any allowance for line haul, general expenses, taxes or return upon property. By applying an operating ratio of 66.7 per cent figures from 12 to 16 cents per 100 pounds are derived. Respondents say that at the time the proposed scale was prepared they were not aware of the fact that their terminal costs were so great and suggest that they would have been justified in beginning the proposed scale with a first-class rate of 18 or 20 cents for the first 5 miles. Some criticism may be made of the methods used in making the cost study, and one of the protestants contends that the figures can not be taken as conclusive.

The representative of the Chicago shipping interests, a man of many years' experience in traffic and transportation matters, gave it as his opinion that the terminal costs on less-than-carload freight amounted to about 5 cents per hundred pounds at each end of the line, and he suggested a reconstruction of the proposed scale by beginning it with a first-class rate of 20 cents for 5 miles and making graded increases in the rates for short hauls generally. It was pointed out upon the hearing that a considerable portion of short-haul traffic would probably be lost to motor service if the rail rates are too high, but that fact could not enter very largely into our determination of what would be reasonable rates. It must also be borne in mind that the cost figures submitted cover only less-than-carload freight.

In view of the deductions necessary to represent terminal costs, less-than-carload freight is not remunerative except where the cars are very heavily loaded. When we take into account the way cars and the cars that move between points other than large cities, we may say that upon the whole the average merchandise car is not heavily loaded. The Cleveland, Cincinnati, Chicago & St. Louis Railway found that the average carload of less-than-carload freight for a certain six months' period was about 10,000 pounds, and that the average rate charged on the contents was the third-class rate. Between large centers the average load was about 15,000 pounds. Respondents introduced in evidence an exhibit showing earnings based on these figures for various distances. Deducting 8 cents per 100 pounds for terminal expenses on the 10,000-pound loading, the car-mile earnings shown range from a minus figure to 16 cents. Deducting 11 cents per 100 pounds for terminal expenses on the 15,000-pound loading, the car-mile earnings shown range from 7 to 11 cents.

We shall consider now the reasons for the two scales that are proposed for use to and from zones B and C, higher than within zone A. It is contended that this is necessary because of unfavorable conditions

in Michigan. From a traffic standpoint, Michigan is peculiarly situated. The tonnage handled by the carriers in a large measure has its origin or destination in that state, and there is not as much overhead or through traffic as we find passing through Ohio, Indiana, and Illinois en route from trunk line territory to points west of the Mississippi River or vice versa. Compared with the other states in C. F. A. territory Michigan is sparsely populated. The extensive timber lands which formerly supported the Michigan carriers have in a large measure been cut over, agriculture has not yet fully developed, and there is much unoccupied farm land. Michigan stands far below the other states in the production of brick, pig iron, iron and steel articles, coal, stone, petroleum, and other commodities which constitute the principal sources of revenue for railroads generally. Lake carriers deprive the Michigan carriers of a large tonnage in commodities which are handled by rail in other states. The result is that the density of traffic in Michigan is considerably less than elsewhere in C. F. A. territory. While these things are particularly true of zone C, they are also true of the rest of the state to a sufficient extent to affect the carriers appreciably. Much evidence was offered along the foregoing lines, but we are principally concerned with the actual effects of these various conditions upon the traffic of the roads. The traffic density, or number of tons-one-mile per mile of line, for the several states during 1914 was as follows:

Michigan (entire state).....	758, 922
Illinois.....	1, 781, 078
Indiana.....	2, 103, 373
Ohio.....	2, 806, 244

These comparisons are not of great probative value because the figures for Michigan include the northern peninsula. The traffic density for all revenue freight for October, 1916, was 43,978 in zone C, 99,861 in zone B, and 196,203 in that portion of zone A which lies in the state of Michigan. The basis for these figures is not disclosed and they may be subject to some modification, but it is fair to say that they indicate, in a rough way at least, the difference in traffic density. Protestants admit that C. F. A. territory generally enjoys a higher density than Michigan. The greater cost of obtaining coal owing to the long hauls from the mines, the greater severity of the winter weather, lack of trainload commodities, and various other conditions work for higher operating costs than obtain in C. F. A. territory generally. The Michigan lines say that the differences between the zone A scale and the two other scales is merely nominal compared with the differences in conditions. However, owing to the use of fewer basing points in making rates to and from Michigan the differ-

ences in the scales may not fully represent the differences in the rates themselves.

While an application of zone A scale to traffic moving to or from zone B would generally increase the present rates on the first four classes it would also cause probably as many and as heavy decreases as increases on fifth and sixth class traffic. The Michigan lines would feel the effects of a change on fifth class more than on any other class. Beans, hay, potatoes, and inbound iron and steel constitute the bulk of their carload class traffic and move at fifth-class rates. However, they enjoy a considerable carload traffic in automobiles, furniture, and other commodities which move under the higher classes.

The differences between the rates for zone A on the one hand and for zones B and C on the other would accrue to the Michigan lines before prorating.

To support their proposal of a higher rate level in C. F. A. territory generally the carriers rely in a large measure upon what we found and said in *The Five Per Cent Case*, upon the comparisons herein made with rates in other territories and their evidence as to terminal costs and car revenue on less-than-carload traffic. They also offer evidence as to their financial condition.

The financial condition of the C. F. A. lines was exhaustively considered in *The Five Per Cent Case*. The data submitted in this case is similar, and includes figures for the later years, viz, 1914, 1915, and 1916. There was a decrease in revenue in 1914, followed by an improvement in 1915, while 1916 was a banner year. The Michigan lines in particular, generally speaking, are in poor financial condition.

In *The Five Per Cent Case* we stated that the attitude of the officials of the roads operating in C. F. A. territory, as disclosed on the record, indicated that they joined in that proceeding not because they thought the so-called 5 per cent increase would meet their requirements or that that form of relief was appropriate in C. F. A. territory, but only because of the desire of other and more powerful lines operating in trunk line territory to present to us in that proceeding one general plan of relief.

The increases which we permitted C. F. A. territory in *The Five Per Cent Case* went into effect October 26, 1914. New York, Pennsylvania, Ohio, and West Virginia have permitted similar increases. Michigan has permitted a readjustment and substantial increases. Illinois, with some few exceptions, has refused any increases and apparently has done so largely because the present C. F. A. scale applying on interstate traffic into the state is in many cases lower than the Illinois scale. The carriers have never gotten the increases in Indiana, and they say that the present chaotic condition of their rates is one of the principal reasons why they have failed. They now have pending

before the Indiana commission a proposal to establish the same scale as they propose here for zone A.

As soon as the final hearing was concluded respondents petitioned the Commission to vacate its orders of suspension and permit the proposed rates to go into effect pending the final decision on the record made. The petition was not granted, but respondents were authorized to build their proposed increase of 15 per cent on the rates in the suspended tariffs.

The complaints to this Commission against individual rates in C. F. A. territory in the past have been few, but the protests here against the proposed changes, especially with reference to rate relationships, are pronounced and numerous. It is probably safe to say that some of the protestants would prefer to see a moderate horizontal increase built upon the present rate structure with all its inconsistencies, rather than an approval by the Commission of the rates here proposed.

The principal protestant is the C. F. A. Cities Rate Readjustment Committee, a temporary organization formed for the purposes of this case, and composed of the traffic and commercial bodies of some thirty-odd cities in Ohio and Indiana, and several large industries. It insists that the carriers establish beyond all question of doubt that the proposed rates are reasonable *per se*. It contends that if the C. F. A. carriers need more revenue they should not expect the traffic covered by the suspended schedules to stand the entire burden, but should distribute it over commodity rates generally and also over rates applying interterritorially. Since the hearing, respondents have filed schedules proposing increases in various class and commodity rates related to those here involved, but which, at the request of the carriers, have been suspended and are under investigation in Investigation and Suspension Docket No. 1051, entitled *C. F. A. Class Rate Scale No. 2*. This protestant objects to the Commission's considering this subsequent action of the carriers as bearing upon the merits of this case. It opposes a readjustment mainly because of the disturbances in rate relationships which are entailed. Disturbance of rate relationships is not confined to rates wholly within C. F. A. territory. Since no corresponding increases are proposed in the rates between points in eastern trunk line territory, on the one hand, and points in C. F. A. territory, on the other, any increases which are permitted in the rates between points within the latter territory will disturb the existing rate relationships. The similar situation which would have resulted from the Commission's first decision in *The Five Per Cent Case* was one of the grounds for dissent in that case, but was based largely upon the fact that rates in C. F. A. territory were thought, upon the whole, to be not lower than in eastern trunk line territory.

This protestant also complains because of the large mileage blocks in the proposed scale and because of the "inflations" which result in its application. It is also opposed to the manner in which the proposed rates to and from zones B and C are determined. Traffic moving into or out of these zones is to be charged the zone B or zone C rates, regardless of how much of the haul is in zone A and how little is in zones B or C. For instance, the zone B scale would fix the rate from Cincinnati to Lansing, notwithstanding the fact that most of the haul is in zone A. In New England there are two scales of rates; one for so-called class A roads and one for so-called class B roads. When traffic moves over a through route formed by a class A and a class B road, the scale for class A roads is used in connection with a constructive mileage made up by adding together the actual distance on the class A road and the actual distance on the class B road, plus 25 per cent of the class B road's distance. This protestant suggests that some such method might well be used between different zones in C. F. A. territory.

Toledo, Ohio, has generally paid rates into Michigan which were made on substantially the same basis as the Michigan intrastate rates. Several years ago the intrastate rates were materially advanced, as were also the interstate rates to and from Toledo. The proposed tariffs would therefore result in rather marked increases over the rates in effect a few years ago. The present rates from Toledo are already under attack in *Traffic Bureau of Toledo Commercial Club v. Ann Arbor Railroad Co. et al.*, Docket No. 8277, now pending.

Buffalo, N. Y., although considerably farther east than Pittsburgh, Pa., is at present given the same rates as Pittsburgh to and from points in Indiana and Illinois. This situation is due largely to the carriers' policy of keeping the steel mills at the two places on an equality. The proposed tariffs would continue the rate parity only to and from points in Illinois. Any further increases in the Buffalo rates would interfere with the Rochester rates. It is generally understood that the Chicago-New York rates were originally made with at least some regard for water competition on the Erie Canal and the great lakes. The Buffalo interests contend that since there is water competition between Buffalo and Chicago, and since the present rail rates between those points are based upon 60 per cent of the Chicago-New York rates, there should be no increase in the rates between Chicago and Buffalo so long as the rates between Chicago and trunk line territory are not increased. We are considering here the question of reasonable rates for C. F. A. territory, and if a reasonable scale of rates therein when applied between Buffalo and Chicago increases the present rates the 60 per cent basis can not be

controlling, nor are we convinced upon this record that an increase in the Buffalo rates will result in undue prejudice to that city.

Protest is also made by the Buffalo interests regarding increases within the state of New York. If these rates apply on interstate traffic, their reasonableness could more appropriately be tested in a separate proceeding.

The commercial traffic organizations of the Missouri River cities submit that respondents have failed to justify the proposed rates. Their primary interest is in the rates from points in C. F. A. territory to the Mississippi River, because they are used as factors in the through rates to the Missouri River. They have strong competitors at Minneapolis and St. Paul, and are particularly opposed to any increases in the through rates to the Missouri River unless the rates to Minneapolis and St. Paul are correspondingly increased. Increases in the rates from C. F. A. territory to Minneapolis and St. Paul have now been proposed by the carriers and are before us in Investigation and Suspension Docket No. 1051, *supra*. These protestants also point out that increases were not proposed in the joint through rates to points in Arkansas and Texas, and to Memphis, Tenn., and New Orleans, La., where competitors are located. They question the propriety of changing the relationships between points in C. F. A. territory, and call attention to the fact that even in the proposed scale of rates the relationships between the classes are not the same for all distances. In view of the substantial difference between the cost of handling less-than-carload traffic and the cost of handling carload traffic the spread between the fourth and the fifth class rates appears to them to be too small. Upon the whole, the attitude of these protestants toward the proposed readjustment is about the same as that of the C. F. A. Cities Rate Readjustment Committee.

The traffic representative of Chicago's shipping interests, as already stated, advocates even higher rates for short hauls than are proposed in the suspended tariffs. He favors a general readjustment and the elimination of the inequalities that appear throughout the present rate structure, but is opposed to the large mileage blocks in the proposed scale and, since the proposed readjustment is largely a revenue measure, he opposes the carriers' policy of placing the burden of the increases upon the first four classes.

The Michigan Manufacturers' Association, representing the shipping interests principally of zone B, does not oppose a general increase of rates in C. F. A. territory, but contests the right of the carriers to disturb certain existing relationships, and strenuously opposes the proposition to charge a higher scale of rates to and from zone B than between points within zone A. Zone B includes such important manufacturing and commercial centers as Grand Rapids, Muskegon,

Lansing, Flint, Saginaw, and Bay City, which must meet the competition of Detroit, Toledo, and other points which are accorded the zone A scale of rates. It is contended that the large traffic which the zone B cities create should in a large measure offset the considerations upon which the Michigan lines rely for a higher scale of rates to and from zone B. We have stated that the application of the zone A scale to and from zone B would generally increase the present rates on the first four classes, but cause numerous reductions on the fifth and sixth classes. This protestant would be satisfied with zone A rates, subject to the observance of the present rates as minima on fifth and sixth classes. It should be said, however, that the interlocking of the two scales would result in a different relation between the fourth and fifth class rates to and from zone B than would exist in zone A. We observe that if the proposed rates go into effect the carriers will receive considerably greater increases on traffic to and from Michigan than on the other traffic in question because of the very substantial increases that will be necessary in the rates to and from such points as Saginaw, Bay City, Flint, Detroit, Muskegon, and west bank Lake Michigan ports, and in all the rates now related thereto, if the scales for zones B and C are to be applied without discrimination.

The smaller number of basing points for traffic to and from Michigan than is used in the central district is objected to by this protestant. The smaller the number of basing points the larger are the groups and the greater the "inflations" in the rates.

That part of the state of Michigan lying south of the southern boundary of zone B, that is, excluding Detroit and the Michigan Central's main line to Chicago, as a traffic territory is inferior to zone B. It would therefore appear that there is no more reason for including that part of the state in zone A than there would be for including zone B in zone A, except for the fact that the Michigan Central's main line, and Detroit with its heavy tonnage contributing to traffic density, would fall in zone B. The shipping interests of zone B contend that they are entitled to the benefits of Detroit's traffic producing ability as much as zone A is. Detroit is served by two prominent zone B lines as well as by the Michigan Central. Zone B as a traffic territory is superior to that part of zone A which lies in Michigan, even if we include Detroit in the latter. According to the analysis of the Michigan lines statistics made by counsel for the zone B shippers more traffic originates, terminates, and passes through zone B. Counsel does not compare zone B with all of zone A, but only with that part of zone A which is in Michigan. Were it not for the attitude of the Michigan Central, to which we shall presently refer, his argument would seem to suggest the advisability of placing

all of Michigan south of the southern boundary of zone C in one zone, but does not convince us that that one zone should have the same scale of rates as applies in zone A as a whole. It appears that when the readjustment was being prepared the Michigan Central insisted that zone A extend at least far enough north to include Detroit and its main line to Chicago. Some of the other Michigan lines thought the southern boundary of Michigan should be made the southern boundary of zone B. The Michigan Central and the New York Central have branch lines in zone B and reach most of the principal points. They have taken no active part in supporting the proposal for a higher scale for use to and from zone B than between points in zone A, and we infer from the record that possibly there would be no zone B if it were not for the demands of the Pere Marquette and some of the other Michigan lines which dominate the situation. If there is to be a zone B the question arises as to where its southern boundary line shall be drawn. The line we drew for express traffic runs along the forty-third parallel—from Port Huron to Grand Haven, through Lowell and Grand Rapids. It is north of the middle of zone B. The northern boundary of zone B is, of course, the southern boundary of zone C, about which there is no dispute.

Lansing, Mich., located near the center of zone B and served by four of the principal carriers in C. F. A. territory, through its chamber of commerce makes a separate plea. This protestant contends, in effect, that regardless of what may happen to zone B as a whole, Lansing, with its various industries which must meet the competition of those at Detroit, Jackson, Toledo, and other places, should be given the benefit of the zone A scale. It suggests as one method by which the desired result could be accomplished that the northern boundary of zone A, instead of following the main line of the Michigan Central all the way from Chicago to Detroit, might well leave that line at Battle Creek and run along the line of the Grand Trunk Western Railway northeast to Lansing and then along the line of the Pere Marquette southeast to Detroit. As will be seen this would put a pyramid on zone A and include Lansing. This protestant has no complaint to make against the zone A scale, except to say that it may be a little high for distances between 100 and 300 miles. It concedes that the present rates for short hauls are too low, and does not contend that a readjustment is not necessary. It feels that the rates to and from Lansing at present are inequitably adjusted and discriminatory, particularly when compared with those to and from points in zone A, and that the proposed zone B scale would make things worse. To and from several of the principal cities in C. F. A. territory Lansing now pays rates based on the C. F. A. scale. It admits that zone B as a whole has not the traffic density that is to

be found in Ohio, Indiana, and Illinois. It offered in evidence the following statement of traffic density and points out that the figures for the Grand Trunk Western exceed those of most of the C. F. A. lines:

Traffic density on principal C. F. A. lines.

Name of carrier.	Ton-miles of revenue freight per mile of road.
Balt. & Ohio R. R.	2,860,175
Chicago & Erie R. R.	4,222,039
Cin., Ham. & Day. Ry.	1,448,098
C., C., C. & St. L. Ry.	1,877,811
Cin. Nor. R. R.	978,366
D., G. H. & M. Ry.	1,043,651
Grand Trunk West. Ry.	2,635,430
L. S. & M. S. Ry.	3,024,019
Mich. Cent. R. R.	1,666,264
Pere Marq. R. R.	896,525
P., C., C. & St. L. Ry.	2,800,644
Wabash R. R.	1,278,108
W. & L. E. R. R.	1,272,929

Figures taken from reports of carriers to the I. C. C. for fiscal year ending June 30, 1915.

This protestant also calls attention to the fact that Lansing is also served by the Michigan Central and the New York Central, components of a strong railway system. It is fair to say, however, that the lines of these two roads which serve Lansing are practically branches. Lansing is also served by the Pere Marquette, which, though not a strong line, has most of its mileage north of Lansing, where conditions are less favorable than between Lansing and Detroit.

Lansing has the same level of express rates as applies in the balance of C. F. A. territory.

Saginaw and Bay City, Mich., now have rates which to and from a portion of C. F. A. territory are the same as the rates to and from Toledo. For commercial and competitive reasons distance has in the past been largely ignored in making rates to and from these two Michigan points, but in the proposed adjustment they would be given rates made substantially according to scale. The increases they would have to pay are therefore more pronounced than they would otherwise be. The numerous commercial and industrial enterprises of these cities have long enjoyed these advantages, and they naturally resist any effort to put their rates on a distance basis.

Jackson, Mich., 50 miles west of Detroit, has long been charged relatively higher rates than Detroit and other places. The representative of its shipping interests strongly supports the carriers' proposal, mainly for the reason that he sees in the new rates a removal of the discriminations that now exist. The relatively lower rates which Detroit enjoys are a part of the Saginaw-Bay City adjustment above mentioned.

Muskegon, Mich., about 30 miles northwest of Grand Rapids, has numerous industries and several jobbers in competition with those of Grand Rapids. For years past the carriers for commercial reasons have ignored the difference in distance and have accorded Muskegon the Grand Rapids rates to a large territory south of the southern boundary of Michigan. The proposed tariffs would deprive Muskegon of this rate parity and have brought forth strenuous protests from the Muskegon interests, whose business has developed under present rate parity.

A large delegation representing the ports on the west bank of Lake Michigan north of Milwaukee appeared at the hearing and voiced its protest against the proposed rates. The rates apply via the across-lake routes and through Michigan, and there are no all-rail joint through rates to and from C. F. A. territory. Of these cities, Manitowoc and Sheboygan, via across-lake routes, at present have the same rates as Milwaukee. The class rates to Milwaukee from Cincinnati, Ohio, Evansville and Indianapolis, Ind., and other points in C. F. A. territory, from which the short-line distances to Milwaukee make through Chicago, are approximately the following differentials over the rates applicable from the same points to Chicago:

1	2	3	4	5	6
6	5	4	3	2	2

However, from points farther east the class rates to Milwaukee approach more closely the Chicago rates until from Buffalo the rates to Milwaukee and Chicago are the same.

The across-lake lines for commercial reasons, disregarding the greater distance, applied the same rates to and from Manitowoc and Sheboygan. They made the rates to and from Green Bay and other ports north of Manitowoc on the basis of differentials over the rates applicable to and from Manitowoc and Sheboygan. The proposed tariffs would put the rates to and from these ports on a distance basis. The increases that would result are rather radical, but the protestants are concerned mainly with the disturbance of the rate relationships. Probably the greatest change in rate relationship proposed is in the rates from Cincinnati to some of the west bank ports. The present rates from Cincinnati to Manitowoc and Sheboygan are the same as to Milwaukee, but the proposed rates are the following amounts higher than to Milwaukee:

1	2	3	4	5	6
10	8.5	7	5.5	5.5	4

To Marinette and Menominee the present rates are the following amounts over Milwaukee:

1	2	3	4	5	6
6	5	4	3	2	2

The proposed rates are the following amounts over Milwaukee:

1	2	3	4	5	6
10.5	10.5	7	5.5	6.5	5

Several of the ports are on a parity with Chicago and Milwaukee in so far as rates from those ports via western lines to certain western points are concerned, and respondents publish proportional rates from C. F. A. territory to Manitowoc equal to the locals to Chicago for the purpose of equalizing the routes on through traffic.

The present relationships have been maintained for probably 20 years. Capital has been invested and enterprises have been developed thereunder. The protestants have no objection to a reasonable general increase in rates, but contend that the pronounced changes in relationships will seriously affect their industrial and commercial prosperity.

Freight moving between the west bank Lake Michigan ports and points in C. F. A. territory must pass through zone C in Michigan. The suspended tariffs do not materially change the level of the rates in zone C in Michigan and no claim is made that the proposed rates to and from that territory are unreasonable. If the rates to and from Manitowoc and Sheboygan were to be continued on the Milwaukee basis it would require a violation of the long-and-short-haul rule unless the rates at the intermediate points in zone C in Michigan were brought down to the same level.

The carriers say that "if the Commission can see a way out of this situation that will give the west bank Lake Michigan interests what they want and yet conserve the carriers' revenue, that solution will be what all concerned desire." The carriers admit, however, that there appears to be no justification in law for granting relief from the long-and-short-haul rule. They have been unable to point out any difference in circumstances and conditions that has ever been recognized by this Commission in such cases.

The Quincy Freight Bureau complains because the portion of the territory to and from which the rates are made the same as apply to and from St. Louis, Mo., is not as large under the proposed tariffs as it is under those now in effect. If the Commission so desires, respondents will follow the decision in *Class and Commodity Rates to and from Quincy, Ill., and Groups*, 32 I. C. C., 471, 479, and 33 I. C. C., 409, where it was held that the territory to and from which Quincy had St. Louis rates should not be restricted. The proposed rates

to and from some points are more favorable and to and from others are less favorable to Quincy than are the present rates. According to respondents, they are made with greater regard for distance and are in harmony with the general readjustment. There is no evidence to the contrary. The protestant relies upon the case cited.

It may develop that the rates to and from Quincy, Ill., and Louisiana and Hannibal, Mo., should be later readjusted in accordance with such basis as may be prescribed for the upper Mississippi River crossings in Docket No. 8477, *Board of Railroad Commissioners of the State of Iowa v. A. A. R. R. Co.*, now pending.

The shipping interests of Rockford, Ill., protest against the proposed adjustment because it continues a relationship to the Chicago rates which is unsatisfactory to them. The present adjustment is apparently the result of our decision in *Chamber of Commerce of Freeport, Ill., v. Ry. Co., supra*. The proposed rates increase Rockford's disadvantage, but as we understand it, substantially the same method was employed in arriving at the proposed rates as was used in making the present rates.

The Michigan Paper Mills Traffic Association, representing paper mills at Kalamazoo, Plainwell, and Otsego, Mich., favors the new adjustment because certain discriminations would be removed, but it asks that respondents be required to keep the rates from these points, as applied to paper, on an equality. The paper shipped from these points to most of C. F. A. territory moves at fifth or sixth class rates which at present are the same from all three points, although Plainwell and Otsego are 12 and 15 miles, respectively, north of Kalamazoo. The proposed rates would destroy this parity. For instance, the fifth-class rate from the three points to St. Louis, Mo., is now 14.7 cents, while the proposed rates are 14.5 cents from Kalamazoo and 15.5 cents from the two other points. One-half cent of the proposed difference in favor of Kalamazoo is due to the fact that the greater distance from Plainwell and Otsego throws them into the next higher mileage block and the other one-half cent is due to the fact that Kalamazoo is in zone A while the two other points are in zone B. The paper mills are the principal and substantially the only industries at Otsego and Plainwell and are in keen competition with the more numerous mills at Kalamazoo. A continuance of the parity of rates may be desirable and could be accomplished by grouping the points under a commodity tariff without interfering with the proposed class rates.

The National Association of Box Manufacturers protests against any further increases in the class rates as applied to made-up wooden boxes. This commodity, which is rather light and bulky, is rated fourth class when nested and rule 26 when not nested. Owing to

successive increases in the ratings, minimums, and class rates during recent years the freight charges on wooden boxes have been subjected to marked increases and under the proposed rates some of the freight charges would be more than double what they were five or six years ago. The wooden-box manufacturers are seriously affected, also, by the competition of the fiber-board container, which commodity generally moves in knocked-down form in heavy carloads and at rates considerably below sixth class. The box manufacturers in C. F. A. territory have to meet the competition of manufacturers outside of C. F. A. territory whose rates are not here proposed to be increased. This protestant does not suggest that the Commission reject the entire system of new rates merely because the proposed class rates as applied to wooden boxes would result in what are alleged would be unreasonable and discriminatory charges, but it asks the Commission to find that there should be no increases in the freight charges on this particular commodity. We may assume that the question of the propriety of a class rate as applied to any individual commodity is one which may fairly be tried in a proceeding of this kind, but what this protestant desires could be accomplished only by the publication of commodity rates equal to the present rule 26 and fourth-class rates to and from each and every one of the thousands of points in C. F. A. territory. Such procedure probably would have no precedent in rate making. Relief could be given by a reduction in the rating, but this case does not involve a question of rating.

Swift & Company are in competition with packers of Indianapolis, Ind., on peddler-car traffic to points in western and northwestern Indiana. The rates from Indianapolis to these points are on the old C. F. A. scale, while those from Chicago are 5 per cent greater. This is due to the fact that the Indiana commission has not permitted the increases which were allowed on the interstate rates in *The Five Per Cent Case*. Should the proposed rates from Chicago go into effect without an increase in the state rates the preference which the Indiana packers now enjoy would be increased. Such a condition can not be too strongly condemned, but the fault may lie in the Indiana state rates and the situation does not argue against the establishment of the proposed rates from Chicago. The situation here pointed out by Swift & Company probably exists with respect to other traffic from Chicago and Indianapolis. As before stated, a proceeding looking to the establishment of the same scale in Indiana as is here proposed on interstate traffic is now pending before the Indiana commission.

The National Petroleum Association protests against increases on petroleum and its products and because certain group adjustments

in which it is interested are proposed to be disrupted by a stricter observance of distance. Petroleum and its products move at 90 per cent of the fifth-class rates and any disturbances in relationships are merely incidental to the general revision.

The Western Oil Jobbers Association withdrew from the case when it was satisfied that in the new adjustment no favors had been extended to its members' competitors.

The Lehigh Portland Cement Company protests against the proposed rates, not because the rates on cement are included in the readjustment but because any increases permitted in the sixth-class rates may eventually be reflected in the commodity rates on cement. The carriers assert that these commodity rates are not based upon a fixed percentage of the sixth-class rates, but as a matter of fact they are generally not more than $73\frac{1}{2}$ per cent of those rates. As no cement rates are involved in this case we could take no definite action in regard thereto.

The Cadillac Lumber Exchange complains of a discrimination that would be brought about by the proposed tariffs. The rates on lumber from Cadillac and Jennings, Mich., to C. F. A. territory are generally the sixth-class rates which are here proposed to be changed, while the rates on lumber from other producing points in Michigan are commodity rates which are equal to, or less than, the sixth-class rates, and up to the present time have not been increased. Except for this discrepancy the Cadillac Lumber Exchange seems to favor the proposed adjustment and suggests that if the Commission permits it to go into effect the carriers should at once correct the situation.

We have considered all the facts of record. While we are convinced that, upon the whole, the proposed system of rates is superior to the present rate structure, we can not allow it to become effective. The scales must be broken up into smaller mileage blocks, and the so-called inflations reduced by the observance of substantially actual distances on one-line hauls in accordance with the concession made by the carriers at the hearing, and by the setting in of additional basing points for hauls over two or more lines, except to and from zone C, wherever the distance between the basing points now used exceeds 20 miles. The proposed rates, like the present rates, are preferential to short-haul traffic. The rates from Cadillac and Jennings, Mich., as applied to lumber, should be placed on the same basis as regards the relationship to sixth class, as may be contemporaneously applied from other Michigan producing points, except where competitive conditions may warrant a departure. The charging of a slightly higher basis of rates to and from zones B and C has our approval. We will not interfere with the groups as pro-

posed, nor with the methods used in applying the scales, except as noted above. To grant the prayer of the cities adversely affected by the removal of preferences the Commission would in effect require what the act to regulate commerce was largely designed to prevent, namely, unlawful discrimination. Rate relationships long maintained may not be lightly disturbed, but where they are not justifiable as a matter of law we can not require their continuance.

As fully appears from the consideration discussed in this report a determination of reasonable class rates for application in C. F. A. territory must take into account numerous conditions, such as rate adjustments effective in the past and the rates now applicable to traffic between C. F. A. and trunk line territories, which tend to support a different basis of rates than that which might be found reasonable in the absence of such conditions. We find that respondents have not justified the rates named in the suspended tariffs. We further find that the scales of class rates appearing in Appendices Nos. 9 and 10 are just and reasonable and may be used in lieu of respondents' scales A and B and in the same manner, subject to the modifications required by the next preceding paragraph. These scales are divided into 5-mile blocks for distances up to and including 100 miles. They then progress by 10-mile blocks up to and including 300 miles. Beyond that 20-mile blocks are used. The zone A scale begins with 16 cents as the first-class rate for 5 miles and less. One cent is added for each succeeding block up to and including 50 miles. Beyond that, up to and including 100 miles, on the theory that the charge per ton-mile should decrease, it progresses by additions of one-half cent for each mileage block. Thence, up to and including a distance of 200 miles, it progresses by additions of 1 cent per block, or twice as much as for the blocks for the distances from 50 to 100 miles, for the reason that the blocks are doubled in size. On the theory that the charge per ton-mile should further decrease for longer distances, an increase of one-half cent per block is then used up to and including 300 miles. Beyond that, as the blocks have doubled in size, the degree of progression is doubled, 1 cent per block being observed. The rates on the lower classes are in all cases related to first class according to the following percentages:

1	2	3	4	5	6
100	85	67	50	35	28

We may say as a matter of information that in the Chicago-New York scale the rates for the lower classes appear to be related to the first-class rate according to the following percentages:

1	2	3	4	5	6
100	86½	66½	46½	40	33½

The zone B scale starts with a rate 2 cents higher on first class for 5 miles than does the zone A scale. For use to and from zone C, or subdivisions thereof, respondents may work out scales of differentials to be added to the rates in the zone B scale.

In publishing the rates the following rule for the disposition of the fractions shown in these scales shall be observed: Fractions of less than $\frac{1}{4}$ or .25, to be omitted; fractions of $\frac{1}{4}$ or .25, or greater, but less than $\frac{3}{4}$ or .75, to be shown as one-half ($\frac{1}{2}$); fractions of $\frac{3}{4}$ or .75, or greater, to be increased to the next whole figure.

A strict observance of these scales would require some modification of the rates to and from Rochester, N. Y.

We have dealt with the general situation in C. F. A. territory. It may be that some minor phases of the readjustment have not been fully tried out. If such is the case, they may, of course, be brought to our attention.

In connection with this case, hearing was had upon applications for continuance of certain existing departures from the long-and-short-haul rule of the fourth section of the act, but they will be disposed of separately.

An order will be entered requiring the cancellation of the suspended schedules.

APPENDIXES.

APPENDIX No. 1.

	Commodity.	Percentage basis.
1	Acids, muriatic and sulphuric.....	90 per cent of fifth class.
2	Acid, sulphuric and nitric, mixed.....	Do.
3	Aqua ammonia, or ammoniacal liquor.....	Do.
4	Alumina, sulphate of.....	90 per cent of sixth class.
5	Arsenic, crude, and arsenic white (originating at points in Colorado, Montana, and Utah).	83.33 per cent of sixth class.
6	Asphaltum n. o. s. in O. C.; asphaltum substitutes n. o. s. in O. C.	{80 per cent of sixth class. 90 per cent of sixth class.
7	Ash, volcanic.....	80 per cent of sixth class.
8	Barytes.....	90 per cent of sixth class.
9	Binder, briquette coal.....	83.33 per cent of sixth class.
10	Boards (binder's, box, chip, paper stock, straw, and wood-pulp)....	Do.
11	Cement paving tar.....	90 per cent of sixth class.
12	Chloride of calcium.....	85 per cent of sixth class.
13	Clays and silicates, viz: Clays, ground and prepared..... Earth, fuller's, kaolin, silex..... Silica, silicate, and silicon.....	{80 per cent of sixth class.
14	Concentrates, bauxite ore.....	90 per cent of sixth class.
15	Concentrates, fluoride aluminum.....	Do.
16	Copperas (sulphate of iron).....	83.33 per cent of sixth class.
17	Earth or muck, swamp.....	Do.
18	Bleach or bleaching (chloride of lime), dry.....	85 per cent of sixth class.
19	Feldspar.....	90 per cent of sixth class.
20	Flint.....	Do.
21	Fluoride, aluminum.....	Do.
22	Furniture as specified in item 51 of 12026.....	126 per cent of fourth class.
23	Gas liquor.....	90 per cent of fifth class.
24	Jellicate.....	85 per cent of sixth class.
25	Liquor, calcium chloride of.....	Do.
26	Lye, concentrated, dry.....	90 per cent of sixth class.
27	Lye, soap.....	Do.
28	Lye, spent, in tank cars.....	83.33 per cent of sixth class.
29	Niter, cake.....	85 per cent of sixth class.
30	Oil, coal tar, and creosote.....	90 per cent of fifth class.
31	Oil of coal tar, light.....	Do.
32	Oil, petroleum, and petroleum products.....	Do.
33	Lime, sulphate of.....	85 per cent of sixth class.
34	Oil, pine.....	90 per cent of fifth class.
35	Oil, rosin.....	Do.
36	Oil, tar oil.....	Do.
37	Ore, bauxite.....	90 per cent of sixth class.
38	Oxide, spent.....	80 per cent of sixth class.
39	Paper filler.....	Do.
40	Peat, filler (natural soil dried and ground).....	83.33 per cent of sixth class.
41	Peat and peat filler (natural soil dried and ground).....	Do.
42	Peat filler (natural soil dried and ground).....	Do.
43	Pebbles, flint, grinding or polishing.....	90 per cent of sixth class.
44	Pitch, candle.....	80 per cent of sixth class.
45	Pitch, coal tar and oil tar.....	Do.

	Commodity.	Percentage basis.
46	Pitch, coal tar, and oil tar	90 per cent of sixth class.
47	Potash, caustic, in iron drums or in tank cars.....	85 per cent of sixth class.
48	Potash, caustic, in packages other than as described above.....	90 per cent of sixth class.
49	Pulp, wood, wet.....	Do.
50	Sal ammoniac.....	Do.
51	Salt, cake.....	85 per cent of sixth class.
52	Salt, from points south of Ohio and west of Mississippi rivers.....	75 per cent of sixth class.
53	Salts, Epsom.....	90 per cent of sixth class.
54	Salts, Glauber.....	85 per cent of sixth class.
55	Size, rosin.....	80 per cent of sixth class.
56	Soda, ash.....	85 per cent of sixth class.
57	Soda (sodium), caustic.....	Do.
58	Soda crystals.....	Do.
59	Soda (sodium), silicate of.....	Do.
60	Soda (sodium), sulphide of, crude.....	Do.
61	Soda (sodium), sal.....	90 per cent of sixth class.
62	Soda (sodium), sulphate of.....	85 per cent of sixth class.
63	Soda (sodium):	
	Bicarbonate of.....	} 90 per cent of sixth class.
	Bisulphate of.....	
64	Soda, sesqui carbonate of, and monohydrate of.....	85 per cent of sixth class.
65	Sodium, sulphide of (other than crude).....	Do.
66	Sulphur (unground, crude) from Ohio and Mississippi rivers from beyond.....	75 per cent of sixth class.
67	Sulphate, sodium aluminum.....	90 per cent of sixth class.
68	Tanning extract (originating at Knoxville, Tenn.).....	90 per cent of fifth class.
69	Tar, coal and oil.....	80 per cent of sixth class.
70	do.....	90 per cent of sixth class.
71	Tar, candle.....	80 per cent of sixth class.
72	Turpentine, in tank cars.....	90 per cent of fifth class.
73	Whiting.....	85 per cent of sixth class.
74	Zinc, chloride.....	90 per cent of fifth class.

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APPENDIX No. 2.
Comparison of various mileage scales.

Dis- tances.	Scale.	1	2	3	4	5	6
10	Present C. F. A.....	7.9	7.9	7.4	6.3	4.7	3.2
	Proposed C. F. A.....	13	11	8.5	6	4.5	3.5
	Michigan.....	12.6	11.6	8.4	7.4	5.3	3.7
	New England "Zone A" ¹	11	9	8	6	4	4
	New England "Zone B" ¹	13	11	9	7	5	5
	Pennsylvania ²	7	7	6	6	5	4
	Illinois.....	12	10.5	9	6.8	5.4	(³)
	Iowa.....	14.8	12.6	10.1	7.4	5.2	(³)
25	Wisconsin.....	14	11.9	9.3	7	5.6	(³)
	Present C. F. A.....	7.9	7.9	7.9	7.4	5.8	4.7
	Proposed C. F. A.....	18.5	15.5	12	8	6.5	5
	Michigan.....	15.8	13.7	9.5	8.4	6.3	4.7
	New England "Zone A" ¹	14	12	10	8	6	5
	New England "Zone B" ¹	16	14	12	9	7	6
	Pennsylvania ²	13	10	10	8	7	6
	Illinois.....	16.5	15	12	9	7.2	(³)
50	Iowa.....	17	14.5	11.3	8.5	5.9	(³)
	Wisconsin.....	18.9	16.1	12.6	9.5	7.6	(³)
	Present C. F. A.....	12.6	12.1	11	8.9	7.9	6.8
	Proposed C. F. A.....	24.5	20.5	15.5	10.5	8.5	6.5
	Michigan.....	20	17.9	13.7	10.5	7.9	6.8
	New England "Zone A" ¹	19	16	13	10	8	6
	New England "Zone B" ¹	22	19	15	12	9	7
	Pennsylvania ²	22	18	14	9	8	8
75	Illinois.....	23.3	18.8	15.8	11.3	9	(³)
	Iowa.....	20	17	13.3	10	7	(³)
	Wisconsin.....	23.4	19.9	15.6	11.7	9.4	(³)
	Present C. F. A.....	18.9	16.8	15.8	11	8.4	7.4
	Proposed C. F. A.....	28	23.5	18	12.5	9.5	7.5
	Michigan.....	24.2	21	16.8	11.6	8.9	7.4
	New England "Zone A" ¹	24	20	17	13	10	8
	New England "Zone B" ¹	28	23	20	15	12	9
100	Pennsylvania ²	28	21	17	11	10	10
	Illinois.....	27.1	22.6	18.8	13.2	10.5	(³)
	Iowa.....	22	18.7	14.7	11	7.7	(³)
	Wisconsin.....	27.9	23.7	18.6	14	11.2	(³)
	Present C. F. A.....	25.2	23.1	20	13.1	9.5	8.4
	Proposed C. F. A.....	30	25	19	13	10.5	8
	Michigan.....	28.4	25.2	20	13.7	10	8.4
	New England "Zone A" ¹	28	24	20	15	11	9
100	New England "Zone B" ¹	33	28	23	18	13	11
	Pennsylvania ²	32	25	20	14	13	11
	Illinois.....	30.8	24.8	19.9	15	12	(³)
	Iowa.....	24	20.4	16	12	8.4	(³)
	Wisconsin.....	32.4	27.5	21.6	16.2	13	(³)

¹ Recommendation of joint conference of Interstate Commerce Commissioner and Public Service Com-
missions of New England states. Effective Apr. 1, 1914.

² Pennsylvania (east of Pittsburgh) scale.

³ Classifications used in connection with these scales provide 10 classes, making comparisons below fifth
class impracticable.

Comparison of various mileage scales—Continued.

Dis- tances.	Scale.	1	2	3	4	5	6
150	Present C. F. A	29.9	26.3	21	14.2	11	8.9
	Proposed C. F. A	<i>35.5</i>	<i>30</i>	<i>23</i>	<i>15.5</i>	<i>12.5</i>	<i>9.5</i>
	Michigan	31.5	27.3	21	15.8	11.6	9.5
	New England "Zone A" ¹	33	28	23	18	13	11
	New England "Zone B" ¹	39	33	27	21	15	13
	Pennsylvania ²	37	32	25	18	15	13
	Illinois	36.1	28.6	22.2	18.1	14.4	(³)
	Iowa	32	25.3	19.5	15.3	11.3	(³)
200	Wisconsin	39.4	33.5	26.3	19.7	15.7	(³)
	Present C. F. A	34.7	29.9	23.1	15.8	12.6	10
	Proposed C. F. A	<i>39.5</i>	<i>33</i>	<i>25</i>	<i>17.5</i>	<i>13.5</i>	<i>10.5</i>
	Michigan	41	34.7	26.3	20	15.2	11.6
	New England "Zone A" ¹	38	32	27	21	15	12
	New England "Zone B" ¹	44	37	32	25	18	15
	Pennsylvania ²	46	40	32	23	18	16
	Illinois	39.1	31.6	24.4	19.6	15.6	(³)
250	Iowa	40	30.2	23	18.6	14.2	(³)
	Wisconsin	46.4	39.4	30.9	23.2	18	(³)
	Present C. F. A	38.9	33.6	24.7	16.8	14.2	11
	Proposed C. F. A	<i>42</i>	<i>35.5</i>	<i>27.5</i>	<i>18.5</i>	<i>14.5</i>	<i>11.5</i>
	Michigan	44.1	37.8	28.4	22.1	16.3	12.6
	New England "Zone A" ¹	43	37	30	24	17	14
	New England "Zone B" ¹	50	43	35	28	20	16
	Pennsylvania ²	53	45	35	25	20	17
300	Illinois	41.7	33.8	26.3	21.1	16.8	(³)
	Iowa	48	35.1	26.5	21.8	17.1	(³)
	Wisconsin	52.9	45	35.3	24	18.8	(³)
	Present C. F. A	42	35.7	26.3	17.9	15.2	12.1
	Proposed C. F. A	<i>44</i>	<i>37</i>	<i>29</i>	<i>19.5</i>	<i>16.5</i>	<i>12.5</i>
	Michigan	49.4	43.1	32.6	24.2	18.4	14.2
	New England "Zone A" ¹	48	41	34	26	19	16
	New England "Zone B" ¹	56	48	40	30	22	19
400	Pennsylvania ²	59	51	38	26	22	20
	Illinois	44.4	36.1	28.2	22.6	18.1	(³)
	Iowa	56	40	30	25	20	(³)
	Wisconsin	57.9	49	38.6	24.7	19.7	(³)
	Present C. F. A	46.2	39.4	29.9	20.5	17.9	14.7
	Proposed C. F. A	<i>48</i>	<i>41</i>	<i>32</i>	<i>22</i>	<i>17.5</i>	<i>14.5</i>
	Michigan	53.6	46.2	34.7	26.3	20	15.2
	New England "Zone A" ¹						
400	New England "Zone B" ¹						
	Pennsylvania ²	67	58	42	30	25	22
	Illinois	48.1	39.9	31.6	24.8	19.9	(³)
	Iowa	61	45	35	30	25	(³)
400	Wisconsin	65	55	44	28	22	(³)

¹ Recommendation of joint conference of Interstate Commerce Commissioner and Public Service Commissions of New England states. Effective Apr. 1, 1914.

² Pennsylvania (east of Pittsburgh) scale.

³ Classifications used in connection with these scales provide 10 classes, making comparisons below fifth class impracticable.

Comparison of various mileage scales—Continued.

Dis- tances.	Scale.	1	2	3	4	5	6
450	Present C. F. A.	47.3	41	31.5	22.1	18.9	15.8
	Proposed C. F. A.	50	42.5	33.5	23	18.5	15.5
	Michigan	55.7	47.3	35.7	27.3	20.5	15.8
	New England "Zone A" ¹						
	New England "Zone B" ¹						
	Pennsylvania ²						
	Illinois	49.3	40.8	32.7	25.7	20.5	(*)
	Iowa	63.5	47.5	37.5	32.5	27.5	(*)
	Wisconsin						

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² Pennsylvania (east of Pittsburgh) scale.

³ Classifications used in connection with these scales provide 10 classes, making comparisons below fifth class impracticable.

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APPENDIX NO. 3.

[T. L. and N. E. denotes trunk line and New England.]

Distances.	Territories.	1	2	3	4	5	6
5 to 10.....	T. L. and N. E.....	10.8	9.1	7.9	6.0	4.6	3.9
	C. F. A.....	9.4	9.1	8.1	7	5.4	4.1
20 to 25.....	T. L. and N. E.....	14.1	11.5	10.3	8.3	6.7	5.8
	C. F. A.....	12	11	9.6	8.2	6.4	5.1
56 to 60.....	T. L. and N. E.....	22.8	19.2	15.8	11.6	9.1	8.1
	C. F. A.....	18.4	16.4	14.5	11	8.4	7
85 to 100.....	T. L. and N. E.....	30.1	25.1	20.5	15.5	12.4	10.7
	C. F. A.....	26.6	23.9	20	13.2	10	8.5
140 to 160.....	T. L. and N. E.....	37.4	32	25.8	18.8	15.4	13
	C. F. A.....	31.4	27	21.9	14.6	11.5	9.4
180 to 200.....	T. L. and N. E.....	39.4	33.6	27.2	20.3	16.6	14.5
	C. F. A.....	35.5	30.7	23.5	15.9	12.9	10.2
250 to 275.....	T. L. and N. E.....	42.2	36.3	28.5	20.6	17.3	14.6
	C. F. A.....	40.3	34.4	25.5	17.4	14.6	11.5
325 to 350.....	T. L. and N. E.....	46.6	38.6	30.4	21.5	18.4	15.1
	C. F. A.....	44.6	38.1	28.6	19.6	16.5	13.6
400 to 425.....	T. L. and N. E.....	49.2	42.5	33.3	23.7	20.2	16.9
	C. F. A.....	46.6	41.1	30.5	21.1	18.1	14.8
475 to 500.....	T. L. and N. E.....	52.1	44.9	34.8	24.8	20.9	17.3
	C. F. A.....	48.6	42.1	32.1	22.4	19.1	15.8

APPENDIX No. 4.

Present C. F. A. scale and its illogical characteristics.

Distances.	1	2	3	4	5	6
5.....	7.9	7.9	7.4	6.3	4.2	3.2
10.....	7.9	7.9	7.4	<i>6.3</i>	4.7	3.2
15.....	7.9	7.9	7.9	7.4	5.3	3.7
20.....	7.9	7.9	7.9	<i>7.4</i>	<i>5.3</i>	4.2
25.....	7.9	7.9	7.9	<i>7.4</i>	5.8	4.7
30.....	7.9	7.9	7.9	<i>7.4</i>	6.3	5.3
35.....	8.9	8.9	8.4	7.9	6.8	5.8
40.....	10	10	9.5	8.4	7.4	6.3
45.....	11	11	10.5	<i>8.4</i>	7.9	<i>6.3</i>
50.....	12.6	12.1	11	8.9	<i>7.9</i>	6.8
55.....	13.7	13.1	12.1	9.5	<i>7.9</i>	<i>6.8</i>
60.....	15.2	13.7	12.6	10.5	<i>7.9</i>	<i>6.8</i>
65.....	16.3	14.7	13.7	<i>10.5</i>	<i>7.9</i>	7.4
70.....	17.9	15.8	14.2	<i>10.5</i>	8.4	<i>7.4</i>
75.....	18.9	16.8	15.8	11	<i>8.4</i>	<i>7.4</i>
80.....	20.5	19.4	17.9	11.6	8.9	7.9
85.....	22.1	20	<i>17.9</i>	12.1	<i>8.9</i>	<i>7.9</i>
90.....	23.1	21	<i>17.9</i>	12.6	9.5	8.4
95.....	24.2	23.1	18.9	<i>12.6</i>	<i>9.5</i>	<i>8.4</i>
100.....	25.2	<i>23.1</i>	20	13.1	<i>9.5</i>	<i>8.4</i>
110.....	25.7	<i>23.1</i>	20.5	<i>13.1</i>	9.5	<i>8.4</i>
120.....	26.3	<i>23.1</i>	<i>20.5</i>	<i>13.1</i>	10	<i>8.4</i>
130.....	27.3	24.2	<i>20.5</i>	13.7	10.5	8.9
140.....	28.9	25.2	21	<i>13.7</i>	<i>10.5</i>	8.9
150.....	29.9	26.3	<i>21</i>	14.2	11	8.9
160.....	31.5	27.3	22.1	<i>14.2</i>	11.6	9.5
170.....	32.6	27.8	22.6	14.7	<i>11.6</i>	<i>9.5</i>
180.....	33.1	28.4	<i>22.6</i>	<i>14.7</i>	12.1	<i>9.5</i>
190.....	33.6	29.4	23.1	15.2	<i>12.1</i>	10
200.....	34.7	29.9	<i>23.1</i>	15.8	12.6	<i>10</i>
210.....	35.7	31	23.6	<i>15.8</i>	13.1	10.5
220.....	36.8	31.5	<i>23.6</i>	<i>15.8</i>	13.7	<i>10.5</i>
230.....	37.3	32	24.2	16.3	<i>13.7</i>	11
240.....	37.8	32.6	<i>24.2</i>	16.8	<i>13.7</i>	<i>11</i>
250.....	38.9	33.6	24.7	<i>16.8</i>	14.2	11
275.....	40.4	34.7	25.7	17.3	14.7	11.6
300.....	42	35.7	26.3	17.9	15.2	12.1
325.....	43.1	36.8	27.3	18.9	15.8	12.6
350.....	44.1	37.8	28.4	19.4	16.3	13.7
375.....	45.2	38.3	28.9	20	17.3	14.2
400.....	46.2	39.4	29.9	20.5	17.9	14.7
425.....	46.7	40.4	30.5	21.5	18.4	15.2
450.....	47.3	41	31.5	22.1	18.9	15.8

A. Rates in bold face type represent depressions imposed by Ohio maximum rate law.

B. Rates in italic type represent failure to logically progress rates.

C. Rates in roman type do not represent ideal characteristics. In the majority of cases these rates were also depressed on account of defects noted in items A and B.

APPENDIX NO. 5.

Proposed C. F. A. scale for zone A.

Distances.	1	2	3	4	5	6
5 and under.....	11	9.5	7	5	4	3
10 and over 5.....	13	11	8.5	6	4.5	3.5
15 and over 10.....	15	12.5	9.5	6.5	5	4
20 and over 15.....	17	14	11	7.5	6	4.5
25 and over 20.....	18.5	15.5	12	8	6.5	5
35 and over 25.....	20.5	17.5	13	9	7	5.5
45 and over 35.....	22.5	19	14.5	10	8	6
55 and over 45.....	24.5	20.5	15.5	10.5	8.5	6.5
70 and over 55.....	26	22	17	11.5	9	7
85 and over 70.....	28	23.5	18	12.5	9.5	7.5
100 and over 85.....	30	25	19	13	10.5	8
120 and over 100.....	32	27	20.5	14	11	8.5
140 and over 120.....	33.5	28.5	21.5	15	11.5	9
160 and over 140.....	35.5	30	23	15.5	12.5	9.5
180 and over 160.....	37.5	31.5	24	16.5	13	10
200 and over 180.....	39.5	33	25	17.5	13.5	10.5
225 and over 200.....	41	34.5	26.5	18	14	11
250 and over 225.....	42	35.5	27.5	18.5	14.5	11.5
275 and over 250.....	43	36.5	28	19	15	12
300 and over 275.....	44	37	29	19.5	15.5	12.5
325 and over 300.....	45	38	29.5	20	16	13
350 and over 325.....	46	39	30.5	20.5	16.5	13.5
375 and over 350.....	47	40	31.5	21.5	17	14
400 and over 375.....	48	41	32	22	17.5	14.5
425 and over 400.....	49	41.5	33	22.5	18	15
450 and over 425.....	50	42.5	33.5	23	18.5	15.5
475 and over 450.....	51	43.5	34.5	23.5	19	16
500 and over 475.....	53	45	35.5	24	20	16.5
525 and over 500.....	54.5	46	36.5	25	20.5	17
550 and over 525.....	56	47.5	38	25.5	21	17.5
575 and over 550.....	57.5	49	39	26.5	21.5	18
600 and over 575.....	59	50.5	40	27	22	18.5
625 and over 600.....	61	51.5	41	27.5	23	19
650 and over 625.....	62.5	53	42	28.5	23.5	19.5
675 and over 650.....	64	54.5	43	29	24	20
700 and over 675.....	65.5	56	44.5	30	24.5	20.5
725 and over 700.....	67	57	45.5	30.5	25	21
750 and over 725.....	69	58.5	46.5	31.5	26	21.5
775 and over 750.....	70.5	60	47.5	32	26.5	22
800 and over 775.....	72	61	48.5	33	27	22.5
825 and over 800.....	73.5	62.5	49.5	33.5	27.5	23
850 and over 825.....	75	64	51	34.5	28	23.5
875 and over 850.....	77	65.5	52	35	29	24
900 and over 875.....	78.5	66.5	53	36	29.5	24.5
925 and over 900.....	80	68	54	36.5	30	25

The above scale is not applied between western termini of eastern trunk lines and stations west of the Illinois-Indiana State line taking in excess of 100 per cent of Chicago-New York City rates.

APPENDIX No. 6.

Proposed C. F. A. scale for zone B.

Distances.	1	2	3	4	5	6
5 and under.....	13	11	8.5	6	4.5	3.5
10 and over 5.....	15	12.5	9.5	6.5	5	4
15 and over 10.....	17	14	11	7.5	6	4.5
20 and over 15.....	18.5	15.5	12	8	6.5	5
25 and over 20.....	20.5	17.5	13	9	7	5.5
35 and over 25.....	22.5	19	14.5	10	8	6
45 and over 35.....	24.5	20.5	15.5	10.5	8.5	6.5
55 and over 45.....	26	22	17	11.5	9	7
70 and over 55.....	28	23.5	18	12.5	9.5	7.5
85 and over 70.....	30	25	19	13	10.5	8
100 and over 85.....	32	27	20.5	14	11	8.5
120 and over 100.....	33.5	28.5	21.5	15	11.5	9
140 and over 120.....	35.5	30	23	15.5	12.5	9.5
160 and over 140.....	37.5	31.5	24	16.5	13	10
180 and over 160.....	39.5	33	25	17.5	13.5	10.5
200 and over 180.....	41	34.5	26.5	18	14.5	11
225 and over 200.....	43	36	27.5	19	15	11.5
250 and over 225.....	45	38	29	20	15.5	12
275 and over 250.....	46	38.5	29.5	20.5	16	12.5
300 and over 275.....	47.5	40	30.5	21	16.5	13
325 and over 300.....	48.5	40.5	31.5	22	17	13.5
350 and over 325.....	49.5	41.5	32	22.5	17.5	14
375 and over 350.....	50.5	42.5	33	23	18	14.5
400 and over 375.....	51.5	43	34	24	18.5	15
425 and over 400.....	52	44	34.5	24.5	19.5	15.5
450 and over 425.....	53	44.5	35.5	25	20	16
475 and over 450.....	53.5	45.5	36.5	25.5	20.5	16.5
500 and over 475.....	55	46.5	37.5	26.5	21	17
525 and over 500.....	57	48	38.5	27	22	17.5
550 and over 525.....	58.5	49.5	39.5	28	22.5	18
575 and over 550.....	60	51	40.5	28.5	23	18.5
600 and over 575.....	61.5	52	42	29.5	23.5	19
625 and over 600.....	63.5	53.5	43	30	24.5	19.5
650 and over 625.....	65	55	44	31	25	20
675 and over 650.....	66.5	56.5	45	31.5	25.5	20.5
700 and over 675.....	68	57.5	46	32.5	26	21
725 and over 700.....	70	59	47.5	33.5	27	21.5
750 and over 725.....	71.5	60.5	48.5	34	27.5	22
775 and over 750.....	73	62	49.5	35	28	22.5
800 and over 775.....	74.5	63	50.5	35.5	28.5	23
825 and over 800.....	76.5	64.5	51.5	36.5	29.5	23.5
850 and over 825.....	78	66	53	37	30	24
875 and over 850.....	79.5	67.5	54	38	30.5	24.5
900 and over 875.....	81	68.5	55	38.5	31	25
925 and over 900.....	83	70	56	39.5	32	25.5

APPENDIX No. 7.

Proposed C. F. A. scale for zone C.

Distances.	1	2	3	4	5	6
5 and under.....	16	13.5	10.5	7.5	5.5	4.5
10 and over 5.....	18	15	11.5	8	6	5
15 and over 10.....	20	16.5	13	9	7	5.5
20 and over 15.....	21.5	18	14	9.5	7.5	6
25 and over 20.....	23.5	20	15	10.5	8	6.5
35 and over 25.....	25.5	21.5	16.5	11.5	9	7
45 and over 35.....	27.5	23	17.5	12	9.5	7.5
55 and over 45.....	29	24.5	19	13	10	8
70 and over 55.....	31	26	20	14	10.5	8.5
85 and over 70.....	33	27.5	21	14.5	11.5	9
100 and over 85.....	35	29.5	22.5	15.5	12	9.5
120 and over 100.....	36.5	31	23.5	16.5	12.5	10
140 and over 120.....	38.5	32.5	25	17	13.5	10.5
160 and over 140.....	40.5	34	26	18	14	11
180 and over 160.....	42.5	35.5	27	19	14.5	11.5
200 and over 180.....	44	37	28.5	19.5	15.5	12
225 and over 200.....	46	38.5	29.5	20.5	16	12.5
250 and over 225.....	48	40.5	31	21.5	16.5	13
275 and over 250.....	49	41	31.5	22	17	13.5
300 and over 275.....	50.5	42.5	32.5	22.5	17.5	14
325 and over 300.....	51.5	43	33.5	23.5	18	14.5
350 and over 325.....	52.5	44	34	24	18.5	15
375 and over 350.....	53.5	45	35	24.5	19	15.5
400 and over 375.....	54.5	45.5	36	25.5	19.5	16
425 and over 400.....	55	46.5	36.5	26	20.5	16.5
450 and over 425.....	56	47	37.5	26.5	21	17
475 and over 450.....	56.5	48	38.5	27	21.5	17.5
500 and over 475.....	58	49	39.5	28	22	18
525 and over 500.....	60	50.5	40.5	28.5	23	18.5
550 and over 525.....	61.5	52	41.5	29.5	23.5	19
575 and over 550.....	63	53.5	42.5	30	24	19.5
600 and over 575.....	64.5	54.5	44	31	24.5	20
625 and over 600.....	66.5	56	45	31.5	25.5	20.5
650 and over 625.....	68	57.5	46	32.5	26	21
675 and over 650.....	69.5	59	47	33	26.5	21.5
700 and over 675.....	71	60	48	34	27	22
725 and over 700.....	73	61.5	49.5	35	28	22.5
750 and over 725.....	74.5	63	50.5	35.5	28.5	23
775 and over 750.....	76	64.5	51.5	36.5	29	23.5
800 and over 775.....	77.5	65.5	52.5	37	29.5	24
825 and over 800.....	79.5	67	53.5	38	30.5	24.5
850 and over 825.....	81	68.5	55	38.5	31	25
875 and over 850.....	82.5	70	56	39.5	31.5	25.5
900 and over 875.....	84	71	57	40	32	26
925 and over 900.....	86	72.5	58	41	33	26.5

APPENDIX No. 8.

Statement showing percentage relationship of various classes to sixth class in proposed C. F. A. scale (except for zones B and C, Michigan).

Distances.	1		2		3		4		5		6	
	Rate.	Per cent.	Rate.	Per cent.	Rate.	Per cent.	Rate.	Per cent.	Rate.	Per cent.	Rate.	Per cent.
5 and under.....	11	375	9.5	315	7	240	5	165	4	130	3	100
10 and over 5.....	13	375	11	315	8.5	240	6	165	4.5	130	3.5	100
15 and over 10.....	15	375	12.5	315	9.5	240	6.5	165	5	130	4	100
20 and over 15.....	17	375	14	315	11	240	7.5	165	6	130	4.5	100
25 and over 20.....	18.5	375	15.5	315	12	240	8	165	6.5	130	5	100
35 and over 25.....	20.5	375	17.5	315	13	240	9	165	7	130	5.5	100
45 and over 35.....	22.5	375	19	315	14.5	240	10	165	8	130	6	100
55 and over 45.....	24.5	375	20.5	315	15.5	240	10.5	165	8.5	130	6.5	100
70 and over 55.....	26	375	22	315	17	240	11.5	165	9	130	7	100
85 and over 70.....	28	375	23.5	315	18	240	12.5	165	9.5	130	7.5	100
100 and over 85.....	30	375	25	315	19	240	13	165	10.5	130	8	100
120 and over 100.....	32	375	27	315	20.5	240	14	165	11	130	8.5	100
140 and over 120.....	33.5	375	28.5	315	21.5	240	15	165	11.5	130	9	100
160 and over 140.....	35.5	375	30	315	23	240	15.5	165	12.5	130	9.5	100
180 and over 160.....	37.5	375	31.5	315	24	240	16.5	165	13	130	10	100
200 and over 180.....	39.5	375	33	315	25	240	17.5	165	13.5	130	10.5	100
225 and over 200.....	41	375	34.5	315	26.5	240	18	165	14	129	11	100
250 and over 225.....	42	366	35.5	309	27.5	239	18.5	161	14.5	127	11.5	100
275 and over 250.....	43	359	36.5	304	28	234	19	159	15	126	12	100
300 and over 275.....	44	352	37	296	29	232	19.5	156	15.5	124	12.5	100
325 and over 300.....	45	347	38	293	29.5	227	20	154	16	123	13	100
350 and over 325.....	46	341	39	289	30.5	226	20.5	152	16.5	122	13.5	100
375 and over 350.....	47	337	40	286	31.5	225	21.5	152	17	120	14	100
400 and over 375.....	48	332	41	283	32	221	22	151	17.5	120	14.5	100
425 and over 400.....	49	326	41.5	277	33	220	22.5	150	18	120	15	100
450 and over 425.....	50	323	42.5	274	33.5	217	23	149	18.5	120	15.5	100
475 and over 450.....	51	320	43.5	272	34.5	216	23.5	146	19	120	16	100
500 and over 475.....	53	320	45	272	35.5	216	24	146	20	120	16.5	100
525 and over 500.....	54.5	320	46	272	36.5	216	25	146	20.5	120	17	100
550 and over 525.....	56	320	47.5	272	38	216	25.5	146	21	120	17.5	100
575 and over 550.....	57.5	320	49	272	39	216	26.5	146	21.5	120	18	100
600 and over 575.....	59	320	50.5	272	40	216	27	146	22	120	18.5	100
625 and over 600.....	61	320	51.5	272	41	216	27.5	146	23	120	19	100
650 and over 625.....	62.5	320	53	272	42	216	28.5	146	23.5	120	19.5	100
675 and over 650.....	64	320	54.5	272	43	216	29	146	24	120	20	100
700 and over 675.....	65.5	320	56	272	44.5	216	30	146	24.5	120	20.5	100
725 and over 700.....	67	320	57	272	45.5	216	30.5	146	25	120	21	100
750 and over 725.....	69	320	58.5	272	46.5	216	31.5	146	26	120	21.5	100
775 and over 750.....	70.5	320	60	272	47.5	216	32	146	26.5	120	22	100
800 and over 775.....	72	320	61	272	48.5	216	33	146	27	120	22.5	100
825 and over 800.....	73.5	320	62.5	272	49.5	216	33.5	146	27.5	120	23	100
850 and over 825.....	75	320	64	272	51	216	34.5	146	28	120	23.5	100
875 and over 850.....	77	320	65.5	272	52	216	35	146	29	120	24	100
900 and over 875.....	78.5	320	66.5	272	53	216	36	146	29.5	120	24.5	100
925 and over 900.....	80	320	68	272	54	216	36.5	146	30	120	25	100

The above scale is not applied between western termini of eastern trunk lines and stations west of the Illinois-Indiana state line taking in excess of 100 per cent of Chicago-New York rates.

APPENDIX No. 9.

Commission's zone A scale.

Distances.	1	2	3	4	5	6
5.....	16	13.6	10.72	8	5.6	4.48
10.....	17	14.45	11.39	8.5	5.95	4.76
15.....	18	15.3	12.06	9	6.3	5.04
20.....	19	16.15	12.73	9.5	6.65	5.32
25.....	20	17	13.4	10	7	5.6
30.....	21	17.85	14.07	10.5	7.35	5.88
35.....	22	18.7	14.74	11	7.7	6.16
40.....	23	19.55	15.41	11.5	8.05	6.44
45.....	24	20.40	16.08	12	8.4	6.72
50.....	25	21.25	16.75	12.5	8.75	7
55.....	25.5	21.68	17.09	12.75	8.93	7.14
60.....	26	22.1	17.42	13	9.1	7.28
65.....	26.5	22.53	17.76	13.25	9.28	7.42
70.....	27	22.95	18.09	13.5	9.45	7.56
75.....	27.5	23.38	18.43	13.75	9.63	7.70
80.....	28	23.80	18.76	14	9.8	7.84
85.....	28.5	24.23	19.1	14.25	9.98	7.98
90.....	29	24.65	19.43	14.5	10.15	8.12
95.....	29.5	25.08	19.77	14.75	10.33	8.26
100.....	30	25.5	20.1	15	10.5	8.4
110.....	31	26.35	20.77	15.5	10.85	8.68
120.....	32	27.2	21.44	16	11.2	8.96
130.....	33	28.05	22.11	16.5	11.55	9.24
140.....	34	28.8	22.78	17	11.9	9.52
150.....	35	29.75	23.45	17.5	12.25	9.8
160.....	36	30.6	24.12	18	12.6	10.08
170.....	37	31.45	24.79	18.5	12.95	10.36
180.....	38	32.30	25.46	19	13.3	10.64
190.....	39	33.15	26.13	19.5	13.65	10.92
200.....	40	34	26.8	20	14	11.2
210.....	40.5	34.43	27.14	20.25	14.18	11.34
220.....	41	34.85	27.47	20.5	14.35	11.48
230.....	41.5	35.28	27.81	20.75	14.53	11.62
240.....	42	35.7	28.14	21	14.7	11.76
250.....	42.5	36.13	28.48	21.25	14.88	11.9
260.....	43	36.55	28.81	21.5	15.05	12.04
270.....	43.5	36.98	29.15	21.75	15.23	12.18
280.....	44	37.4	29.48	22	15.4	12.32
290.....	44.5	37.83	29.82	22.25	15.58	12.46
300.....	45	38.25	30.15	22.50	15.75	12.60
320.....	46	39.1	30.82	23	16.1	12.88
340.....	47	39.95	31.49	23.50	16.45	13.16
360.....	48	40.8	32.16	24	16.8	13.44
380.....	49	41.65	32.83	24.5	17.15	13.72
400.....	50	42.50	33.50	25	17.50	14
420.....	51	43.35	34.17	25.50	17.85	14.28
440.....	52	44.20	34.84	26	18.20	14.56
460.....	53	45.05	35.51	26.50	18.55	14.84

Commission's zone A scale—Continued.

Distances.	1	2	3	4	5	6
480.....	54	45.90	36.18	27	18.90	15.12
500.....	55	46.75	36.85	27.50	19.25	15.40
520.....	56	47.60	37.52	28	19.60	15.68
540.....	57	48.45	38.19	28.50	19.95	15.96
560.....	58	49.30	38.86	29	20.30	16.24
580.....	59	50.15	39.53	29.5	20.65	16.52
600.....	60	51	40.2	30	21	16.8
620.....	61	51.85	40.87	30.5	21.35	17.08
640.....	62	52.70	41.54	31	21.70	17.36
660.....	63	53.55	42.21	31.5	22.05	17.64

The above scale, like that proposed by respondents, is not intended for application between the western termini groups and stations west of the Illinois-Indiana state line taking in excess of 100 per cent of the Chicago-New York rates.

45 I. C. C.

APPENDIX No. 10.
Commission's zone B scale.

Distances.	1	2	3	4	5	6
5	18	15.30	12.06	9	6.30	5.04
10	19	16.15	12.73	9.5	6.65	5.32
15	20	17	13.4	10	7	5.6
20	21	17.85	14.07	10.5	7.35	5.88
25	22	18.7	14.74	11	7.7	6.16
30	23	19.55	15.41	11.5	8.05	6.44
35	24	20.40	16.08	12	8.4	6.72
40	25	21.25	16.75	12.5	8.75	7
45	26	22.10	17.42	13	9.10	7.28
50	27	22.95	18.09	13.5	9.45	7.56
55	27.5	23.38	18.43	13.75	9.63	7.70
60	28	23.80	18.76	14	9.8	7.84
65	28.5	24.23	19.10	14.25	9.98	7.98
70	29	24.65	19.43	14.5	10.15	8.12
75	29.5	25.08	19.77	14.75	10.33	8.26
80	30	25.50	20.10	15	10.5	8.4
85	30.5	25.93	20.44	15.25	10.68	8.54
90	31	26.35	20.77	15.5	10.85	8.68
95	31.5	26.78	21.1	15.75	11.03	8.82
100	32	27.20	21.44	16	11.2	8.96
110	33	28.05	22.11	16.5	11.55	9.24
120	34	28.90	22.78	17	11.9	9.52
130	35	29.75	23.45	17.5	12.25	9.8
140	36	30.60	24.12	18	12.60	10.08
150	37	31.45	24.79	18.5	12.95	10.36
160	38	32.30	25.46	19	13.30	10.64
170	39	33.15	26.13	19.5	13.65	10.92
180	40	34	26.8	20	14	11.2
190	41	34.85	27.47	20.5	14.35	11.48
200	42	35.70	28.14	21	14.7	11.76
210	42.5	36.13	28.48	21.25	14.88	11.90
220	43	36.55	28.81	21.5	15.05	12.04
230	43.5	36.98	29.15	21.75	15.23	12.18
240	44	37.40	29.48	22	15.4	12.32
250	44.5	37.83	29.82	22.25	15.58	12.46
260	45	38.25	30.15	22.5	15.75	12.6
270	45.5	38.68	30.49	22.75	15.93	12.74
280	46	39.10	30.82	23	16.10	12.88
290	46.5	39.53	31.16	23.25	16.28	13.02
300	47	39.95	31.49	23.5	16.45	13.16
320	48	40.80	32.16	24	16.8	13.44
340	49	41.65	32.83	24.5	17.15	13.72
360	50	42.50	33.50	25	17.5	14
380	51	43.35	34.17	25.5	17.85	14.28
400	52	44.20	34.84	26	18.2	14.56
420	53	45.05	35.51	26.5	18.55	14.84
440	54	45.9	36.18	27	18.9	15.12
460	55	46.75	36.85	27.5	19.25	15.4

Commission's zone B scale—Continued.

Distances.	1	2	3	4	5	6
480.....	56	47.60	37.52	28	19.60	15.68
500.....	57	48.45	38.19	28.5	19.95	15.96
520.....	58	49.30	38.86	29	20.3	16.24
540.....	59	50.15	39.53	29.5	20.65	16.52
560.....	60	51	40.2	30	21	16.8
580.....	61	51.85	40.87	30.5	21.35	17.08
600.....	62	52.7	41.54	31	21.7	17.36
620.....	63	53.55	42.21	31.5	22.05	17.64
640.....	64	54.4	42.88	32	22.4	17.92
660.....	65	55.25	43.55	32.5	22.75	18.2

45 I. C. C.

Ken
oma
Tejay
Balkan
Varilla
Amru
Darby
W. W.
Martinsville
Danville
S. Boston

**OFFICIAL MAP
OF
Junction and Terminal Points
IN
CENTRAL FREIGHT ASSN. TERRITORY
AND
ADJACENT JUNCTION AND TERMINAL POINTS
CENTRAL FREIGHT ASSN. TERRITORY
PRORATING TERRITORY**

**EUGENE MORRIS
CHAIRMAN CENTRAL FREIGHT ASSOCIATION
CHICAGO**





OFFICIAL MAP OF Junction and Terminal Points

IN
CENTRAL FREIGHT ASSN. TERRITORY
AND
ADJACENT JUNCTION AND TERMINAL POINTS
CENTRAL FREIGHT ASSN. TERRITORY
PROHIBITORY TERRITORY

EUGENE MORRIS
CHAIRMAN CENTRAL FREIGHT ASSOCIATION
CHICAGO



THE FIFTEEN PER CENT CASE.

PROPOSED INCREASES IN FREIGHT RATES IN EASTERN, WESTERN, AND SOUTHERN TERRITORIES.

Submitted June 12, 1917. Decided June 27, 1917.

All schedules naming increased rates within the western district, and all schedules excepting only those applying to bituminous coal, coke, and iron ore, naming increased rates within the southern and eastern districts are suspended until October 28, 1917, but the eastern carriers are permitted to increase their class rates upon short notice given in the usual way.

George Stuart Patterson for eastern carriers.

R. Walton Moore, Charles J. Rixey, jr., and Edward H. Hart for southern carriers.

Charles Donnelly, C. S. Burg, W. F. Dickinson, O. W. Dynes, H. G. Herbel, T. J. Norton, H. A. Scandrett, R. B. Scott, and Fred H. Wood for western carriers.

Hugh L. Bond, jr., William Ainsworth Parker, and George M. Shriver for Baltimore & Ohio Railroad Company.

T. H. Burgess for Erie Railroad Company.

H. M. Griggs and Clyde Brown for New York Central lines.

J. J. Champion for Carolina, Clinchfield & Ohio Railway.

W. J. Harahan, C. R. Capps, and H. W. McKenzie for Seaboard Air Line Railway Company.

George Dallas Dixon for Pennsylvania Railroad Company.

Howard Elliott for New York, New Haven & Hartford Railroad Company.

Henry J. Hart for Bangor & Aroostook Railroad Company.

Henry G. Herbel, Fred G. Wright, and J. M. Johnson for Missouri Pacific Railway Company and its receiver; St. Louis, Iron Mountain & Southern Railway Company and its receiver; Arkansas Central Railroad Company; Natchez & Southern Railway Company; Natchez & Louisiana Railway Transfer Company; and Union Railroad Company.

George S. Hobbs for Maine Central Railroad Company.

C. W. Huntington and S. M. Adsit for Virginian Railway Company.

George W. Lamb and William A. Northcutt for Louisville & Nashville Railroad Company.

L. F. Loree for Delaware & Hudson Company.

A. H. Lossow and A. R. Marshall for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

C. C. McCain for Trunk Line Association.

James L. Minnis for Wabash Railway Company.

F. W. Kirtland for Florida East Coast Railway Company.

George F. Randolph for Lines in Official Classification Territory.

B. M. Robinson for Tennessee Central Railway Company and its receiver.

Lincoln Green for Southern Railway system.

T. J. Shelton for Arkansas & Louisiana Midland Railway Company.

Benjamin I. Spock for New York, New Haven & Hartford Railroad Company and Central New England Railway Company.

R. V. Taylor, C. B. Hayes, and S. R. Prince for Mobile & Ohio Railroad Company.

W. S. Bronson for Chesapeake & Ohio Railway Company.

Levy Meyer and H. S. Noble for Great Lakes Transit Corporation.

George F. Brownell and H. A. Taylor for Erie Railroad Company and New York, Susquehanna & Western Railroad Company.

Jackson E. Reynolds for Trunk Lines on Anthracite Coal Rates.

George M. Cummins for United Light & Railways Company.

Frank Hagerman for National Association of Owners of Railroad Securities.

Clifford Thorne, Luther Walter, Graddy Cary, S. H. Cowan, and Clyde L. King for National Shippers Conference.

William A. Wimbish and Challen B. Ellis for Southeastern Shippers.

T. K. Riddick for Memphis Freight Bureau.

Cassoday, Butler, Lamb & Foster, W. E. Lamb for California Fruit Growers' Exchange, California Walnut Growers' Association, California Almond Growers' Exchange, De Laval Separator Company, and Iola Cement Traffic Association.

Hance H. Cleland for Washington Public Service Commission, and Public Service Commissions of Idaho and Oregon.

R. H. Countiss for Trans-Continental Freight Bureau.

P. W. Coyle for St. Louis Chamber of Commerce.

Conrad W. Crooker for Boston & Maine Minority Stockholders Protective Association.

Henry C. Flannery for State of Minnesota, and Railroad & Warehouse Commission.

G. H. Albee and W. H. Chandler for Boston Chamber of Commerce.

Frank Reeves for fruit industries of States of Washington, Oregon, and Idaho.

C. B. Bee for Public Service Commission of Missouri.

Harrison A. Bronson for State of North Dakota.

B. Gilham, Macon, Ga., Chamber of Commerce.

Thomas L. Hall for Nebraska State Railway Commission.

Arthur B. Hayes for Rising & Nelson Slate Company, Sea Green Slate Company, Florida Growers & Shippers' League, and Indiana Limestone Shippers.

A. E. Helm for Public Utilities Commission of the State of Kansas.

H. D. Hughes for American Cast Iron Pipe Company.

Francis B. James, E. E. Williamson, Wayne P. Ellis, and C. B. Hewes for National Association of Paving Brick Manufacturers.

James C. Lincoln for Merchants Association of New York.

H. C. Lust for Corporation Commission of Arizona; Northern White Cedar Association; Mason City, Iowa, Chamber of Commerce; Alexandria, La., Chamber of Commerce; Boise, Idaho, Chamber of Commerce; Green River Chair Company; Perfection Biscuit Company; Lamb-Fisher Lumber Company; Pierce-Williams Company; Union Petroleum Company; Contact Process Company; United Light & Railway Company; William Galloway, Waterloo, Iowa; Western Chemical Mfg. Company; Union Stock Yards; Charcoal Iron Company of America; American Live Stock and Loan Company; Iowa District Gas Association; and Iowa Section National Electric Light Association.

Seth Mann for San Francisco Chamber of Commerce and California canning interests.

A. G. T. Moore for Southern Pine Association.

W. H. Miller for Indian Refining Company.

Ira B. Mills, Charles E. Elmquist, and H. B. Warren for Minnesota Railroad and Warehouse Commission.

C. W. Nash for Rising & Nelson Slate Company and Sea Green Slate Company.

N. B. Kelly for Philadelphia Chamber of Commerce.

F. E. Paulson for Lehigh Portland Cement Company.

H. C. Reynolds for Pocono Mountain Ice Shippers.

W. H. Sears for The Sears & Nichols Canning Company.

C. B. Stafford for Louisville Board of Trade.

E. C. Southwick for Providence Chamber of Commerce.

Clifford Thorne for Western Oil Jobbers Association, National Live Stock Shippers Protective League and Corn Belt Meat Producers' Association.

John R. Walker and Claude W. Owen for Southern Pine Lumber.

George B. Webster for Associated Cooperage Industries of America.

E. R. F. Wells for Southern Produce Company.

R. L. Welch for Western Petroleum Refiners Association.

Frank E. Williamson for Buffalo Chamber of Commerce.

George P. Boyle and H. B. Arnold for Sunday Creek Coal Company.

James C. Jeffery and F. C. Gifford for National Association Box Manufacturers.

J. A. Morgan for Houston Chamber of Commerce.

C. D. Chamberlin and *F. W. Boltz* for National Petroleum Association.

W. E. MacEwen for National Refining Company and Western Petroleum Refiners' Association.

Edward A. Thurston for Traffic Committee, Arkwright Club.

G. R. C. Wiles for Public Service Commission, W. Va.

W. C. McCulloch for West Coast Lumbermen's Association.

Alfred Brandeis for A. Brandeis & Son.

William A. Wimbish for Chattanooga Manufacturers' Association, Chattanooga Chamber of Commerce, Chattanooga Retail Merchants' Association, Chattanooga Wholesale & Jobbers' Association; Nashville Traffic Bureau, Atlanta Retail Merchants' Association, Atlanta Freight Bureau, Columbia Chamber of Commerce, Tampa Board of Trade, Montgomery Chamber of Commerce, Columbus Chamber of Commerce, Shippers & Manufacturers Association, Fayetteville Chamber of Commerce, Pensacola Chamber of Commerce, Mobile Chamber of Commerce, Sanford Board of Trade, Savannah Traffic Bureau, Selma Chamber of Commerce, and the Georgia-Florida Sawmill Association, protestants.

C. W. Wickersham and *John A. Kratz* for National Biscuit Company and Biscuit & Cracker Association.

S. J. Wettrick for Seattle Chamber of Commerce and Commercial Club.

A. D. Phillips for Fiske Rubber Company.

Claude H. Reigart for Bethlehem Steel Company.

Oliver E. Sweet and *L. R. Bitney* for State of South Dakota and Board of Railroad Commissioners of South Dakota.

Clyde B. Aitchison for West Coast Lumbermen's Association, California Redwood Association, Western Pine Manufacturers Association, and Western Red Cedar Association.

H. C. Barlow for Chicago Association of Commerce.

Frank Barry for Merchants & Manufacturers Association of Milwaukee.

C. S. Bather for Rockford Manufacturers & Shippers Association and Federation of Furniture Manufacturers.

J. H. Beek for St. Paul Association of Public & Business Affairs.

Borders, Walter & Burchmore for Procter & Gamble Distributing Company, Globe Soap Company, N. K. Fairbanks Company, Louisville Soap Company, Peet Bros. Soap Company, Kirk Soap Company, Kerr Bros. Mfg. Company, Kerr Glass Company, Indiana Northern Railway Company, and Prescott & Northwestern Railroad Company.

George P. Boyle for Hormel & Company, Ruckheim Bros. & Eckstein, and Shotwell & Company.

George T. Bradley for Colorado State Public Utilities Commission.

A. J. Branscom for Commercial Club, Aberdeen, S. Dak.

A. B. Caswell for National Association of Tanners.

W. F. Clarke for B. F. Sturtevant Company and Sanford Riley Stoker Company.

H. H. Corey for State of Oregon.

John B. Daish and *Albert C. Ritchie* for State of Maryland and State Roads Commission.

John B. Daish, *N. B. Wescott*, and *J. Raymond Hoover* for Eastern Shore of Virginia Produce Exchange.

John B. Daish and *J. Raymond Hoover* for Birdsboro Stone Company.

John C. Graham for Jackson Chamber of Commerce.

C. B. Heinemann for The National Live Stock Exchange.

Geo. F. Hichborn for United States Rubber Company.

C. L. Hilliary for F. W. Woolworth Company.

Edward A. Haid for Southern Hardwood Traffic Association and other hardwood lumber interests in the southwest.

J. H. Henderson, *Dwight N. Lewis*, *E. D. Chassell*, and *John A. Guiher* for Iowa Railroad Commission.

Jay W. McCune for Traffic Bureau of Tacoma Commercial Club and Chamber of Commerce.

C. D. Mowen and *W. M. Taylor* for Arkansas Wholesale Grocers' Association; Merchants' Freight Bureau, Little Rock, Ark.; Fort Smith Traffic Bureau, Fort Smith, Ark.; and Pine Bluff Traffic Bureau, Pine Bluff, Ark.

J. S. Marvin for National Automobile Chamber of Commerce.

F. W. Maxwell for The Denver Transportation Bureau.

D. F. Hurd for Cleveland Chamber of Commerce.

C. S. Keene for American Tobacco Company.

Everett Kent for Chestnut Ridge Lumber Company.

Herman Mueller for Lansing Chamber of Commerce.

J. V. Norman for Southern Hardwood Traffic Association and Southern Hardwood Mills.

L. C. Parshall for Battle Creek Chamber of Commerce.

A. D. Phillips for Fisk Rubber Company.

R. W. Poteet for Stanley Works.

Albert L. Vogl and *S. H. Babcock* for Colorado Fair Rates Association.

J. Prince Webster for Railroad Commission of Georgia.

E. E. Bockstedt for Columbia Rope Company.

S. H. Cowan for American National Live Stock Association, Texas Industrial Traffic League, Texas Live Stock Shippers League, Cattle

Raisers Association of Texas, and National Live Stock Shippers Protective League.

R. G. Phillips, R. S. French, and L. A. Kinney for National League of Commission Merchants of the United States, International Apple Shippers' Association, and Western Fruit Jobbers' Association of America.

W. H. Young for Western Fruit Jobbers' Association and Nebraska-Iowa Fruit Jobbers' Association.

J. A. Little and D. J. Crandahl for Board of Railroad Commissioners of North Dakota.

T. W. Tomlinson for American National Live Stock Association.

O. W. Tong for Northern Potato Traffic Association and Libby Lumber Company.

C. H. Rodehaver for National Basket and Fruit Package Association.

C. E. Childe for Traffic Bureau of the Sioux City Commercial Club.

R. D. Sangster for Chamber of Commerce, Board of Trade, Live Stock Exchange, and Hay Dealers Association of Kansas City, Mo.

T. C. Tipton for Jacksonville Traffic Bureau.

Ernie Adamson for McNeil Marble Company, Georgia Marble Company, and Georgia Marble Furnishing Works.

H. M. Wade for Ewauna Box Company, Klamath Mfg. Company, Algoma Lumber Company, Axelson Mfg. Company, D. & B. Pump Company, Motor Car Dealers Association, Whiting-Mead Commercial Company, Pacific Coast Tanners Association, Western Pipe & Steel Company, and Oakland Chamber of Commerce.

Shelby Taylor for Railroad Commission of Louisiana.

W. M. Barrow for Mississippi Cotton Seed Crushers Association; the Railroad Commission of Louisiana; and Attorney General's Department, State of Louisiana.

S. J. Bolton for Chamber of Commerce, La Crosse, Wis.

Walter E. McCornack for American Sand & Gravel Company, National Sand Company, and J. N. Bos Sand Company.

James C. Jeffery for Northwestern Terra Cotta Company and others.

Thomas S. Kennedy for Utilities Service Association of San Francisco, California.

Benjamin C. Marsh for the Committee on Valuation of Railroads.

R. Rosenbluth for Institute Public Service, New York City.

G. J. Bradley for Merchants and Manufacturers Association, E. Clemens Horst Company, Wolf Hop Company, Mebius & Drescher Company, L. D. Jacks, T. A. Liressey & Company, Lillienthal Brothers, Incorporated, Hugo V. Loewi, Elmer E. Fingarr, Benj. Schwarz & Sons, and Otto Seidenberg.

James A. Keller for Pacific Portland Cement Company, Consolidated.

Cassoday, Butler, Lamb & Foster, William E. Lamb for California White and Sugar Pine Manufacturers' Association.

Cassoday, Butler, Lamb & Foster, William E. Lamb, George E. Farrand, and H. C. Lust for California Fruit Growers' Exchange, Mutual Orange Distributors, Randolph Marketing Company, Stewart Fruit Company, Redlands Orange Growers' Association, and American Fruit Distributors.

William Langer for State of North Dakota.

James L. Cowles for World Postal League.

William H. Sears for Sears & Nichols Canning Company.

G. F. Thomas for Arkansas Soft Pine Bureau.

T. Noel Butler for Wistar, Underhill & Nixon.

J. H. Fishback and B. L. Glover for Iola Cement Mills Traffic Association.

J. S. Brown for Chicago Board of Trade.

George J. Kindel for Colorado Granger Association.

E. C. Hoskins for Florida Growers & Shippers League.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

On March 22, 1917, carriers in official classification territory, hereinafter designated eastern carriers, represented to the Commission in a public conference that an emergency had arisen in their operation which required prompt remedial measures. Similar representations were similarly made on March 27 by the carriers in western classification territory, hereinafter referred to as western carriers, and on April 10 by carriers in southern classification territory, hereinafter referred to as southern carriers. In all of these conferences we were urged to act promptly, because, it was asserted, the situation had become critical and delay would detract from the beneficial effects of the remedial measures proposed.

Under authority delegated by the act the Commission has established rules governing the publications and filing of rate schedules, which rules have been modified from time to time. At the preliminary conferences we were asked to modify those rules so as to permit the filing in simplified form of schedules proposing a general and horizontal increase in all freight rates except upon certain designated commodities, and to permit such rates to become effective on less than statutory notice. The publication of all the necessary tariffs in the form required by the rules would have involved an expenditure of hundreds of thousands of dollars and consumed much time. We were therefore urged to permit the filing of schedules providing for a percentage increase in rates. The request that in-

creased rates be permitted to become effective on short notice was not granted.

On April 10 and 20, 1917, conferences between representatives of shippers and of carriers and the Commission were held to consider the form of the proposed publications. As a result of these conferences, at which practically no objections were raised to the proposed percentage form of publication, a permissive order was entered on April 23, 1917, granting to the carriers authority to publish and file supplemental tariffs proposing the increased rates in the simplified form requested. Such tariffs were filed on behalf of all, or practically all, the railways in the United States, to become effective July 1, 1917.

Whether these tariffs shall be permitted to become effective as proposed or shall be suspended in whole or in part is the question immediately at issue.

In some quarters it has been alleged that the Commission has abrogated the law and the tariff rules in order to make the filing of these tariffs possible. It should be needless to state that nothing has been done by the Commission in violation of any provision of the statute. We were not asked to transgress or set aside the law and we would certainly not have done so if we had been asked.

We modified certain of our tariff rules as the act authorizes us to do. This we have done in other instances, and no doubt the future will develop instances in which further modifications of these rules will be warranted. The permissive order referred to authorized carriers to file the tariffs proposing horizontal increases in rates on not less than 50 days' notice, whereas the statutory period is not less than 30 days.

Many of the protestants requested us to suspend these tariffs in order that an investigation might be had, as in their view is contemplated by the statute, the implication being that an investigation would be impossible without suspension. This view is erroneous. We have sat as a body for practically a whole month listening to testimony and arguments favoring or opposing these proposed increased rates. More than 6,000 pages of testimony have been received and a mass of statistical and other exhibits has been made a part of this record.

The form of the investigation which we adopted fitted the subject to be investigated. Had these proceedings been conducted subsequent to a suspension of tariffs they could not properly have been materially different from what they have been. Everyone who appeared and expressed a desire to be heard was heard and no one was denied a fair hearing. We might have sat for months listening to detailed testimony relating to specific rates and localities, but such

testimony could have been of little assistance to us in arriving at a proper conclusion with reference to the propriety and reasonableness of the increased rates here proposed covering the entire country. An investigation of such a detailed character is neither necessary nor useful in the exercise of the functions which we are called upon to perform in a case of this character.

During the preliminary conference above referred to authorized representatives of carriers in each of the three rate territorial districts expressed the willingness of all the carriers in the United States to waive all technical requirements and guaranties in order that an expeditious and practicable procedure might be adopted. With this in view they agreed upon the record that if the Commission should authorize an increase on such a proceeding as we have conducted in the instant case they would, if at a later date the situation should change and the Commission should be of the opinion that the increased rates were, in whole or in part, no longer just and reasonable, reduce them on an expression from us to that effect, following a proceeding no more extensive than or different from that in which the increase was permitted. It was the desire of the carriers to bring the issue of the increased rates before us in the simplest, most direct, and economical manner. To this no substantial objection was expressed by any of the protestants.

As stated, the first representations were made on behalf of the eastern carriers on March 22. This is about the time in each month when the officials of the carriers generally get the statistical returns showing the results of operation during the preceding month. The operating results for the month of February, 1917, may well have startled the railway executives because, generally speaking, they were, for the eastern district especially, extremely unfavorable. The weather conditions had been severe. In many sections the difficulties of operation had been unprecedented. Furthermore, as a result of the congestion of traffic on the eastern roads and the various operating difficulties arising out of the shortage of cars, the movement of empty cars westward reached extraordinary proportions over some lines. Because of the severe weather conditions the expenses of the movement were greater than usual, and, of course, the movement of empties adds nothing to the revenues. Finally, increased wages directly and indirectly resulting from legislation first appeared in the operating accounts of a number of the carriers for the month of February. While some carriers made no charges in their accounts for increased wages, resulting directly or indirectly from the legislation referred to, other carriers charged estimated amounts for both January and February. These three causes, severe weather, rela-

tively heavy movement of empty cars, and increased wages, together with increases in the cost of materials and supplies, and to some extent of fuel, made the operating results of the eastern carriers for February alarmingly unfavorable. Under stress of these conditions the railway executives made their first appeals for relief in the emergency in which they believed they found themselves. If these unfavorable tendencies had continued and the operating results for the succeeding months had perpetuated tendencies of the month of February, a problem very different from that which now confronts us would have been presented. That carriers have been obliged to pay increased prices for materials and supplies can not be questioned. It is difficult to characterize with moderation the increases in the prices of metals as well as the prices which have been demanded in various localities for fuel. Tables 1 to 7, inclusive, in the appendix, illustrate the prices of some of the more important commodities which the railways must purchase in large quantities and which consequently have an important effect upon their operating results.

The emergency which the carriers believed existed when these proceedings were initiated was attributed by some primarily to the war in Europe. Various statements relating to a causal connection between the war and the railway emergency led us to include in a circular of interrogatories submitted to the carriers a question relating to the burdens which it was believed the war would cast upon them. While a number of witnesses referred to the burdens to the carriers of the war, viewing the record as a whole no such burdens have been shown to exist nor has the probability of their development been demonstrated. It was not shown that military transportation had been in the past, or is likely to be in the future, a financial burden to the carriers. On the contrary, certain facts were referred to which indicated that the transportation of troops had been more remunerative during certain mobilizations in the past than ordinary passenger transportation. In so far as anything that is here asked of us might contribute to the success of the war we should respond unhesitatingly to the fullest extent of our lawful authority. We are not unmindful of the fundamental and immensely valuable service which the carriers perform in times of peace and even more in times of war. No one will deny that the successful operation of the railways is vital to our national welfare. We fully appreciate the services which the railways are performing, and the unusual efforts they are making to secure a maximum of efficiency. But this record does not convince us that the suspending or refusing to suspend the proposed rates, or the granting or refusing to grant increased rates, will facilitate or retard the successful prosecution of the war.

An examination of the results of operation during 1916 as pictured in the reports of carriers to the Commission shows that that year was as a whole more profitable for the carriers than any preceding year, and it may be assumed that they might suffer some abatement of the prosperity of that year without being crippled or in any way incapacitated. In Tables 8 to 11, inclusive, in the appendix are shown monthly averages per mile of road for operating revenues and operating income for all class I roads in the United States and for those in the several districts before mentioned. The table for the country as a whole goes back to July, 1907. Owing to the fact that the reports for the earlier years were not classified with respect to districts, the figures by districts have been shown only from January, 1911. With respect, however, both to the country as a whole and to the several districts, the relation of the figures for operating revenues for each calendar year to those for the first four months, January to April, inclusive, is seen to be rather remarkably uniform, enabling one to expect with considerable confidence that the operating revenues for the calendar year 1917 will be in excess of those of any preceding calendar year covered by the series of reports. An estimate of operating income for the year is also shown, but, owing to the fact that a considerable number of increased costs that may reasonably be expected had not become effective prior to April 30, this estimate is not entitled to so much confidence as that of operating revenues.

A study of the figures contained in these tables suggests that, barring unforeseen contingencies and unusual disruptions of commercial affairs during the remainder of the year 1917, we shall find as results of the year's operations of class I roads figures about as follows:

	United States.	Eastern district.	Southern district.	Western district.
Average operating revenues per mile of road.....	\$17, 104	\$29, 432	\$13, 610	\$12, 597
Average operating income ¹ per mile of road.....	4, 334	5, 802	3, 872	3, 813

¹ Based on costs represented in accounts to April 30, 1917. Anticipated increased costs, if realized, will operate to reduce somewhat the estimated figures for operating income per mile.

It is not practicable to determine from figures now compiled the book values of investment in road and equipment per mile of road prior to June 30, 1915, for roads in the several districts, but those for the United States cover a longer period. While these figures can not be accepted as reflecting accurately the actual cash investment they may be taken as significant for purposes of comparison. The figures for operating income per mile of road for calendar years when compared with those for book value of investment in road and equipment per mile of road at June 30, give for class I carriers for

the United States as a whole the following ratios, using the estimated figures for 1917:

	1917	1916	1915	1914	1913	1912	1911	1910	1909	1908
Ratio of operating income to investment	<i>Per ct.</i> 15.817	<i>Per ct.</i> 6.400	<i>Per ct.</i> 5.240	<i>Per ct.</i> 4.091	<i>Per ct.</i> 4.683	<i>Per ct.</i> 5.300	<i>Per ct.</i> 5.070	<i>Per ct.</i> 5.519	<i>Per ct.</i> 5.866	<i>Per ct.</i> 4.941

¹ Based on an estimate of \$4,334 operating income per mile of road and book investment of \$74,500 per mile of road. Increasing costs subsequent to Apr. 30, 1917, will probably operate to diminish this figure somewhat.

The estimate of operating income for 1917 may be considerably diminished and still exceed the average for any three consecutive preceding years.

In Table 12 of the appendix the total number of tons of revenue freight originated by the carriers in the respective districts for the fiscal year 1916 is compared with the corresponding figures for the fiscal year ended June 30, 1913, the latter having been the largest prior year with respect to freight traffic. The totals for the respective districts show that the eastern roads originated 39,253,873 more tons during the fiscal year ended June 30, 1916, than in 1913; the southern roads 20,438,186 more tons, and the western roads 21,091,749 more tons. The increase in the tonnage of bituminous coal was 6,849,600 tons for the eastern district, 20,751,461 tons for the southern, while for the western there was a decrease of 1,949,606 tons. Similar increases are indicated in the tonnage of other commodities and groups of commodities originated in the respective districts, with the exception of forest products, with respect to which a decrease in the tonnage originated is observed for each of the districts. In this connection it should be recalled that the total number of revenue ton-miles of all carriers in the United States earning more than \$100,000 per annum for the fiscal year ended June 30, 1916, was 343,099,937,805 compared with 301,398,752,108 revenue ton-miles for the fiscal year ended June 30, 1913, the largest preceding year with respect to freight traffic.

The consideration of a general increased rate case is necessarily a study of tendencies. The trend of the curves shown in the different diagrams for the respective periods of time is unmistakably in a certain direction. It will be observed that there have been numerous ups and downs, but the general tendency has been favorable, including, for the country as a whole, the first four months of 1917. These figures and diagrams do not suggest a country-wide emergency. Emergencies of greater or less intensity may have existed with respect to individual carriers during various limited periods, but the direction of the curves shows recovery in each instance before the lapse of extended periods of time. The general trend has been distinctly favorable.

An examination of the operating results of individual carriers shows that certain of them have lacked prosperity while others have been affluent. The reasons for lack of prosperity on the part of some of them are well known. The great majority of them show a healthy condition from financial and operating standpoints. We must consider not only the successful and strong but also the unsuccessful and the weak. The needs of certain weak lines, however, can not justify a course of action that is unwarranted by the condition of the larger number of strong and successful lines. This record shows that many of the carriers are in a most prosperous condition. They have been managed by men of conspicuous ability and integrity, in whose achievement the whole nation may well take pride. It is certainly desirable that successes of this character which mean efficient service shall continue.

A number of witnesses laid stress on the land grants received by various carriers and upon large accretions to their property which many of them have been able to make out of earnings. Under the system of uniform accounts adopted by the Commission in 1907 all expenditures of this character out of earnings are shown in the annual reports. A compilation made from these reports shows that as of June 30, 1916, class I carriers had expended for "additions to property through income and surplus" a total of \$503,651,510, of which the eastern carriers had expended \$295,476,596, the southern carriers \$47,880,932, and the western carriers \$160,293,982. These sums "include such amounts of income and surplus as have been definitely appropriated or set aside and expended since June 30, 1907, in the acquisition of property the cost of which is included in property investment accounts other than those for securities, etc."

The theory of this character of testimony seems to be that property donated and property paid for out of revenues of carriers does not in fact become their property in the sense that they may be permitted or are entitled to earn a reasonable return thereon, and that the public having donated certain property or having contributed to the revenues of the carriers through the payment of freight charges and passenger fares in reality owns such property and therefore can not lawfully be asked to pay rates and fares which will yield a return on such property. These are questions of large import which have been directly raised in valuation proceedings now pending before us and which will not be discussed here.

All the carriers expressed their willingness to begin immediately upon a revision of the horizontally increased rates with a view to reestablishing existing relationships between competitive localities, commodities, and territories, thus recognizing the commercial

disturbances which would certainly follow the proposed increases. It was generally admitted that a percentage increase would destroy existing rate relations, and in all cases where the amount of the charge is appreciably large and where the differences in distance between competitive localities are relatively great a 15 per cent increase would seriously affect competitors in a common market. It is probably due to this fact that with respect to certain important commodities the protests came from persons located at the greater distances from the markets.

Only a most urgent and extraordinary situation would justify permitting tariffs carrying a large percentage increase to become effective. This record does not disclose the existence of a situation requiring so heroic a remedy.

The absence of protests against the proposed rates from many interests and localities affected received some attention upon the record. Certain witnesses were questioned respecting the extent of the clientele for which they were authorized to speak. The relative absence of protests from certain large traffic areas was likewise brought to our attention. The extent to which individuals, firms, and localities refrained from protesting against the increased rates on the theory that increased rates would result in an increase in the car supply and improvement in service can not be stated; nor can it be known to what extent public sentiment may have been influenced by those who could without serious difficulty pass along to others the burden of increased rates. The record also shows that some individuals and firms who could not so shift the burden favor the increases and are willing directly to bear the higher charges in the belief that such burden will be offset by advantages to them and to the country at large.

These facts are not without significance in so far as they indicate an existing state of the public mind. They are quite without significance as a basis for determining the propriety and reasonableness of the proposed rates. The statute does not authorize us to arrive at a decision with respect to the reasonableness of rates on the basis of preponderating views. It may be admitted that facts of this character reflected in the record indicate a somewhat different state of public opinion from that which has heretofore prevailed in connection with similar issues before us. Representatives of insurance companies and bankers appeared to favor permitting the rates to become effective as a means of stabilizing their investments in railroad securities and stocks.

While the instant case transcends all that have preceded it in the magnitude of the sums involved and the spontaneity and universality of its precipitation, it is in its essential characteristics and

fundamental factors identical with other great rate-increase cases which have been considered.

From the proceedings of 1910 and 1911 to the present time all such cases have involved the consideration and weighing one against the other of certain fundamental factors. The essential character of these primary factors was the same in all the cases, but the attendant circumstances, the relation of the factors to one another, and certain significant secondary factors were not the same in all. This lack of identity in the relationship and surroundings of the individual factors accounts for the different conclusions arrived at in different proceedings.

In this connection we refer especially to Tables 13 to 21 in the appendix, which reflect operating results through the entire period embracing all of the important increased rate proceedings. They are the tables used in our reports of July and December, 1914, brought down to date. Tables 13, 14, 15, and 16, show those things which strikingly reflect the improvement in operating results following December, 1914.

From a technical standpoint the question at issue is that of suspension of the proposed increased rates. In substance the issue is the reasonableness of those rates. That is the issue which was tried on this record. The investigation which generally follows the suspension of tariffs in the instant case preceded their suspension. The reasons for this have been suggested in this report. As a matter of law we can not require cancellation of these rates at this time. From the beginning of this proceeding the carriers, the shippers, and the Commission alike have dealt with the essence of the economic problems presented rather than with legal questions.

We are not unmindful of the fact that plausible and persuasive arguments may be buttressed upon selected statistics taken from this record. The compilations upon which we rely in arriving at our conclusions were made in our division of statistics, based upon the sworn reports filed by the carriers. All the statistical exhibits introduced by carriers and protestants have been carefully checked, just as far as checking was possible, from the annual and other periodical and special reports filed with us by the carriers. There can be no question regarding the fundamental accuracy of the statistical summaries upon which we have primarily relied in this respect.

As we have said, if the unfavorable results of February had continued our conclusion must have been different. Those unfavorable tendencies, however, did not continue. The general operating results, looked at in the large through a series of years, show on the whole substantial improvement, general prosperity, and, by comparison with former years, ample financial resources with which to conduct transportation.

Increased prices of materials and supplies, the increased cost of fuel, and increased wages are all significant and extremely important factors in the situation which we are here considering. Some of the symptoms are unquestionably unfavorable. Much or all of what some of the railway officials believe will occur may occur in the future. No one can know in advance. Higher prices are being paid to-day, and still higher prices may have to be paid in the future, but that these higher prices will have that unfavorable effect on the general operating results which some believe they will have is by no means certain.

We have carefully considered the expenditures made by the carriers in 1916 for maintenance of way and structures and for maintenance of equipment. These indicate that no undue or disproportionate outlay was made in 1916 for these purposes. This question was carefully considered in the *1915 Western Rate Advance Case*, 35 I. C. C., 497, 514, 515. In the western district the ratio of maintenance expenditures to total operating revenues in the fiscal year 1916 was less than for the average of the years 1914 and 1915; and in general we do not think that the outlay for maintenance has been excessive, either relatively or absolutely.

In a general way both the fiscal year ended June 30, 1916, and the calendar year 1916 were remarkable years in the history of American railroads. The volume of tonnage was never before equaled, and the gross receipts, as well as the net receipts, in each of the three districts were greater than ever before. Thus the average operating revenue per mile of road operated for the calendar year 1916 was \$15,715 as against \$13,455 for 1915, \$12,885 for 1914, \$13,819 for 1913, and \$13,237 for 1912. Similarly, the average operating income per mile of road operated in 1916 was \$4,723, as against \$3,827, \$2,964, \$3,347, and \$3,599 for the four preceding years, respectively. The ratio of operating income to average investment, or book cost, for the calendar year 1916 was 6.40 per cent, as against 5.24, 4.09, 4.68, and 5.30 per cent for the preceding calendar years, respectively.

A notable difference began to manifest itself in October, 1916, persisting, and on the whole growing accentuated, during the first four months of the current calendar year as between the eastern district and the southern and western districts. Table 22 in the appendix indicates per mile of road operated the railway operating revenues, the railway operating expenses, the net revenue from railway operations, and the railway operating income for carriers in the United States as a whole, for carriers in the eastern, southern, and western districts, comparing each month beginning in July, 1916, through April, 1917, with the corresponding month of the previous year.

An inspection of the table will disclose that the carriers in the eastern district down through September, 1916, showed an increase

in net revenue and in operating income over the corresponding month of the previous year. Beginning, however, with October, 1916, and continuing through April, 1917, this tendency is reversed for the eastern carriers, whereas with few exceptions the southern and western carriers continued to show comparative increases in these items for each successive month. Thus, in October, 1916, the eastern carriers showed a decline in net revenue per mile of road from \$840 to \$821, and in operating income from \$760 to \$726.

For November, 1916, the eastern carriers showed a decline in these two items from \$800 to \$720 in net revenue, and from \$721 to \$623 in operating income.

For December, 1916, the same tendency persisted, showing a decline in net revenue from \$706 to \$630 and a decline in operating income from \$625 to \$532.

The increasing tendency in these items for the months of July, August, and September, 1916, sufficed for the last six months of the calendar year 1916 to make a slightly better aggregate showing as contrasted with the last six months of the previous calendar year. But so far as the eastern carriers are concerned, the decline for the last quarter of 1916 was continued for the first four months of 1917 and in increasing ratio.

Thus, in January, 1917, net revenue per mile of road operated declined from \$608 to \$531, and operating income from \$520 to \$434.

For February, 1917, exceptional operating conditions exaggerated the decline and rendered it more pronounced. The February returns show a decline in net revenue from \$576 to \$271, and in operating income from \$489 to \$176.

March showed the same comparative decline, although upon a less intensified scale than in February. Net revenue declined from \$666 to \$557, and operating income from \$578 to \$460. The returns for April indicated the same tendency, net revenue declining from \$686 to \$611, and operating income from \$599 to \$512.

Summarizing the four months ended with April, 1917, the decline in net revenue per mile of road was from \$2,536 to \$1,970, and in operating income from \$2,185 to \$1,581. If we compare the relative decline in the last quarter of 1916 when this tendency became noticeable, we find that the falling off in operating income from the operating income of the last quarter of the previous year was approximately 17 per cent, whereas for the first four months of the current calendar year the decline in operating income as compared with the first four months of the previous calendar year amounts to about 27.5 per cent.

In interpreting these figures it must be borne in mind that the gross revenue in each of the three districts showed for each month

from July, 1916, to April, 1917, a comparative increase, except only for the month of February in the eastern district. In the southern and western districts the results, so far as net revenue and operating income are concerned, show an almost unbroken contrast to the results for the eastern district.

If on the basis of the first four months of the current calendar year we estimate the total gross revenue in the eastern district for the entire year, we find indicated an average operating revenue per mile of road of \$29,432, as against an average operating revenue for the preceding year of \$27,688. Despite this increase in the gross operating revenue the average operating income per mile of road estimated for 1917, on the basis on the first four months of the calendar year, amounts to but \$5,802, as against \$7,782 for 1916. This indicates that the ratio of operating income to average investment in the eastern district will be but 4.893 per cent, as against 6.662 per cent for 1916.

In other words, using the actual figures for the first four months of the present calendar year, it would appear that although the gross revenue for the carriers in the eastern district would exceed that for the calendar year 1916 by approximately 7 per cent the operating income per mile of road will be but \$5,802, as against \$7,782 in 1916. This is only 75 per cent as much net income per mile of road in 1917 for performing about 107 per cent of the service performed in 1916.

The returns for the first four months of the calendar year 1917 for the roads in the southern district and in the western district disclose a different tendency and outlook. Common alike to the three districts is the probable increase in gross operating revenues. Thus, the first four months disclose average operating revenues per mile of \$4,388 in the southern district as against \$3,960 for the corresponding period in 1916, and \$3,705 as against \$3,288 in the western district. But in both the southern and western districts the first four months of the current calendar year presage not only an increase in the average operating income per mile of road, \$1,222 as against \$1,181 for the first four months of 1916 in the southern district and \$930 as against \$877 for the roads in the western district, but in both an increase in the ratio of operating income to average investment is indicated, rising in the case of the southern district from 6.390 per cent to 6.453 per cent and in the western district from 5.953 per cent to 6.217 per cent.

It may very pertinently be asked how it results that with the carriers in all three districts confronting increased expenditure for labor, fuel, and supplies, the prospective effect upon their respective net income is so markedly different. To this inquiry it is probably

too early to make a completely satisfactory answer. Among the factors the following may be suggested as highly probable contributory causes. The ratio of increased wages may have been greater for the eastern carriers. The eastern carriers have encountered earlier and to a more complete degree the increase in prices of materials and supplies. The volume of traffic which has congested certain of the roads and terminals in the eastern district would seem to indicate that with their present facilities they can perhaps take on additional traffic only at an increasing cost per unit. In this respect they present a somewhat sharp contrast to roads in the southern and western districts. Congestion at eastern ports and terminals has led to the diversion of some traffic to Gulf and south Atlantic ports. Significant, too, is the testimony of Mr. Fairfax Harrison, president of the Southern Railway, who stated:

I think I am quite safe in saying that we have no such troubles. We could get along with a much larger volume of business than we are doing to-day, and do it economically. Our trouble is that we are met by embargoes at boundary points, at Potomac Yard, at Cincinnati, and at other places where we have to get into the congested territory. For example, at the moment our normal preponderance of tonnage is northbound, but we are moving very little northbound to-day and our preponderance is southbound. It is an uneconomical displacement of our operating situation; it is more expensive. But we have not had in the south yet, fortunately for us, the causes of the congestions which have affected the whole country elsewhere.

In the western district the transcontinental roads, particularly the Southern Pacific and the Santa Fe, are now carrying a large volume of traffic which would normally move via the Panama Canal. This they are apparently able to handle without great difficulty. Whatever may be the other contributing causes to the divergent tendencies manifested in the three districts, the existence of agencies making for radically diverse results in the eastern district from those likely to appear in the southern and western districts would seem to be substantiated by the following table, which gives the ratio of net operating income to property investment in the three districts from 1900, with the probable results indicated for 1917. The estimates for 1917 are based on the monthly reports of carriers to the Commission, and thus relate to operating income rather than to net operating income, the distinction being that net operating income is derived from operating income by adjusting the last-named item for hire of equipment and other rents. For the purposes of this table the distinction is negligible, and the 1917 item is restricted to operating income only, because the monthly reports do not include data for rents.

Net operating income per cent of property investment.

Fiscal years ending June 30—	Eastern district.	Southern district.	Western district.	Fiscal years ending June 30—	Eastern district.	Southern district.	Western district.
1900.....	5.27			1910.....	6.16	5.19	5.06
1901.....	5.49	4.46	4.84	1911.....	5.13	6.22	4.68
1902.....	5.69	4.77	5.29	1912.....	5.10	4.40	4.24
1903.....	5.77	5.01	5.30	1913.....	5.28	4.55	4.91
1904.....	5.44	4.87	5.03	1914.....	3.95	4.25	4.24
1905.....	5.70	5.15	5.25	1915.....	4.42	3.41	4.14
1906.....	6.21	5.26	5.90	1916.....	6.64	5.26	5.43
1907.....	6.14	4.67	6.19	1916.....	¹ 6.42	¹ 5.27	¹ 5.29
1908.....	5.14	3.87	4.87	1917 (estimated)....	² 6.61		² 5.45
1909.....	5.43	4.72	5.34		4.89	6.45	6.21

¹ Average based on gross property investment.² Average based on property investment less reserves for depreciation.

The protestants do not dispute the fact of large increases in the prices of supplies, although there is, perhaps naturally, a divergence of opinion between the carriers and certain of the protestants as to the average percentage of such increases; but whether that percentage be taken at approximately 30 per cent, as certain of the protestants insist, or at 42 per cent or higher, as the carriers assert, the general increase is undeniable. The aggregate of the increased expenses thus imposed can not be predicted with any satisfactory degree of certainty. We can not know what the future fluctuations in the prices of such supplies may be. With respect to them, as with railway fuel, there is a remarkable difference in the figures and estimates of the various carriers. Some have contracted for fuel or supplies upon a lower price level, and others are without the protection of such contracts or have contracts to expire at an early date.

Without in any wise impugning the estimates of the carriers or criticisms thereof offered by the protestants, we prefer to confine our forecast to the basis of actual experience for the 10 months from July 1, 1916, including the first four months of the present calendar year.

For these reasons, necessarily stated in somewhat general terms, we are led to the conclusion that no condition of emergency exists as to the western and southern carriers which would justify permitting a general increase in their rates to become effective. In the eastern district increased rates have recently been permitted to become effective generally on bituminous coal, coke, and iron ore. We think that similar increases may properly be permitted in the southern district on coal, coke, and iron ore, and in the western district on coal and coke. This will preserve rate relationships between the several districts. In the southern district the proposed increased rates on coal are on the basis of 15 per cent, with a maximum of 15 cents per ton. These tariffs we shall permit to become effective. In the western district the increases are based upon 15 per cent, with

a minimum of 15 cents per ton. These tariffs will be suspended, but the western carriers may, if they so elect, file new tariffs carrying increases in rates on coal and coke not exceeding in any case 15 cents per ton. All of the tariffs included in this proceeding of the western lines will be suspended. All of the tariffs included in this proceeding of the southern carriers will be suspended, excepting those applying on coal, coke, and iron ore.

In connection with our investigation as to rates on bituminous coal certain proposed increased rates on bituminous coal were suspended in Investigation and Suspension Docket No. 774. Subsequent to the institution of that proceeding conditions surrounding the production, transportation and sale of bituminous coal became so unusual that the principal protestants before us voluntarily conceded that the conditions were abnormal and that the rates might appropriately be increased, some of them, however, contending that the existing relationships of rates from certain coal-producing districts should be preserved. Pending further consideration of that proceeding and of the instant case, the carriers parties to the tariffs referred to voluntarily postponed the effective date thereof to August 1. Since that time increases have been filed, to become effective July 1, to destinations intermediate to those covered by the tariffs of which the carriers postponed the effective date to August 1. It is therefore consistent and appropriate that those carriers be permitted, on short notice, to advance the effective dates of such tariffs, and they are hereby authorized so to do.

For reasons indicated in this report, we shall suspend all of the tariffs before us in this proceeding of the eastern carriers, excepting those applying on iron ore. As has been indicated, however, the conditions confronting the eastern carriers are substantially different from those confronting the southern and western carriers, and we are persuaded that they are entitled to increased revenue beyond and above that which they are securing and will secure from the increased rates on bituminous coal, coke, and iron ore. By recent act of Congress we have been given jurisdiction over the movement, distribution, exchange, interchange, and return of freight cars. The obvious intent of this legislation is that cars shall be so used by the carriers as to secure the performance of the largest possible amount of transportation in needed and equitable ways. Shortly following the outbreak of the European war an unprecedentedly heavy movement of freight to the eastern district began, and that district in large part has been badly congested ever since. Hopeless congestion has been avoided only by a practically continuous condition of operating under embargoes. The result has been that while roads in other sections have generally been short of cars and in possession of less

cars than they owned, the carriers in the eastern district have been in possession of substantially more than their ownership of cars. The hauling of empty cars is expensive and productive of no revenue. Railroad operating officials naturally and properly endeavor to avoid all unnecessary hauling of empties. There has been reason to believe that this disinclination to haul empties has caused the detention on the eastern roads of many cars that were badly needed in the west or south. It is probable, if not certain, that in administering the duties laid upon us by the legislation referred to we shall find occasion to require a very unusual haul of empty cars by the eastern carriers for the purpose of getting them promptly to western or southern localities where they are needed. In this way important additional expenses will probably fall upon the eastern carriers.

As we have indicated, percentage increases, especially where the percentage is substantial, can not fail to disrupt competitive commercial relationships. A general increase in class rates, which preserves existing relationships, distributes itself more generally and more equitably than would general increases on commodity rates. It also affords relatively equal benefits to all of the carriers parties thereto. Among the eastern carriers those located in New England appear to present the most serious condition. They are not carriers of large volumes of heavy loading commodities that move under commodity rates. It is not possible to estimate with confidence and accuracy the amount of additional revenue that will accrue from increased class rates, but from the best information at hand we conclude that the eastern carriers should be permitted to increase their class rates between New York and Chicago to the following scale, and to correspondingly increase their other class rates applying intra-territorially between points in official classification territory, observing the established relationships between ports and localities:

1	2	3	4	5	6
90	79	60	42	36	30

Such tariffs may be made effective upon not less than five days' notice, given in the usual way.

Special emphasis has been laid upon the unusually heavy increased expenses that have been laid upon the carriers by water, which, because of arrangements for through carriage with rail carriers, are subject, as to part or all of their rates, to our jurisdiction. Ordinarily rates via rail-and-water routes are maintained at a lower level than via all-rail routes. Largely increased costs of operation, the diversion of traffic to other channels because of war conditions, and the attendant increased marine insurance have laid upon such rail-and-water routes unusual burdens. We think that existing conditions justify the maintenance of rates via such routes on a level not higher

than the all-rail rates between the same points. Carriers in the eastern, southern, and western districts parties thereto may, if they so elect, file and make effective, upon not less than five days' notice, tariffs increasing existing joint rates between rail-and-water carriers to a level not higher than the all-rail rates between the same points.

It is not improbable that some of the rates which we are authorizing to be increased are held by unexpired orders of the Commission. If that is true in any case, parties to such orders must, before filing such increased rates, apply for and secure specific modification of such orders.

The carriers were clearly within their rights in bringing these matters to our attention when they did. We do not question their good faith in anything they have done in this connection. Their action is an added evidence of the farsightedness and sense of responsibility in the performance of their duties toward the public with which so many of their officials are managing and administering the affairs of their respective properties. The things which they believed several months ago would happen have not happened. None of us know what the future may develop. We do not believe that it would be in the interests of anyone to now resume hearings in detail as to the suspended tariffs. As stated, we believe that the facts which have been developed constitute a full and sufficient basis for arriving at a just conclusion with respect to the proposed increased rates. We shall, through the medium of the monthly reports of the carriers, keep in close touch with the operating results for the future, and if it shall develop that the fears which have prompted the carriers are realized or that their realization is imminent, we shall be ready to meet that situation by such modification or amplification of the conclusions and orders herein reached and entered as are shown to be justified. If it shall develop that what has been accorded herein is more than is appropriate or that the increased rates are no longer warranted, we shall depend upon the pledges of the carriers to respond promptly to an announcement by us of a conclusion to that effect. Inasmuch as a general percentage increase is so undesirable because of its serious effect upon commercial conditions and established relationships, it would seem to be appropriate for the carriers to cancel the tariffs which we suspend herein, and permission is hereby accorded them so to do. The record will be available for consideration in any further proceedings that may be necessary or appropriate in this connection in the future, and any substantially changed conditions which may develop can be promptly, adequately, and fairly dealt with. The foundation for any such action can doubtless best be laid in conferences between the Commission and representatives of the carriers and of the shippers. The existing public

sentiment to which we have referred and the manner in which the proposals of the carriers have been presented and handled by them indicate a feeling of mutual confidence, which at many times in the past has been regrettably absent.

An appropriate order of suspension of the proposed schedules will be entered.

HARLAN, *Commissioner*, concurring:

Under the law, this Commission may act only upon a concurring vote of at least four of its members, and, in view of the recent death of COMMISSIONER CLEMENTS and of the varying conclusions entertained among my colleagues on the important questions presented by the record, it became necessary, in order that some affirmative results might follow from this extended and laborious investigation, that I should concur in the course outlined in the Commission's report. I did this, however, because its findings are in the direction of what the record seems to me to justify and require and not because I regard the relief granted as adequate. Under the circumstances I venture briefly to explain my individual convictions in the case.

That a full hearing has been had, as the report finds, will be obvious to anyone who followed the proceeding or has examined the record. All shippers, either individually, by counsel, or through the traffic and commercial organizations to which they belong, were given an opportunity to be heard; and the shippers who testified were many in number and representative of their respective industries. In addition, a mass of statistical exhibits was introduced in evidence. In this way every aspect of the situation was carefully examined and illustrated. The result is a record that is entirely sufficient to enable us not only to decide whether or not the proposed rates should be suspended, but also to determine, as the Commission in fact has done, whether the present rates in any of the three great rate districts of the country might properly be increased and, if so, to what extent. The report of the Commission therefore brings the case to a conclusion at this point and, wisely in my judgment, does not undertake to continue the investigation as a suspension case under the suspension orders that are now to be entered.

From the mass of statistics offered in evidence on both sides it is not difficult, as the Commission's report indicates, to compile figures to illustrate almost any theory respecting the troubles of the carriers of the country. It is not my purpose, however, in this brief expression to deal much in statistics. It will suffice to say that laying some stress upon the figures for the last four months, the Commission's finding upon the whole record is that the fears of the railroad officials, when they laid their request for increased rates before us, have

not been realized. The report, then, indicates the purpose of the Commission to follow the developments through the medium of the monthly reports of the carriers, and should their earnings make it appear that the dangers feared by the carriers are imminent, the Commission will then meet the situation by promptly amplifying the limited relief now permitted to them.

This month-to-month and purely statistical view of the matter seems to me to be wholly inadequate. Nor do I regard that course as altogether safe. We are facing a much larger problem, and it must be approached in a much broader way if we are to reach a sound solution. The report of the Commission states that some of the symptoms disclosed of record are unquestionably unfavorable. As I read the record, that is undoubtedly the case and, being so, the wisdom of deferring full relief is not apparent to me. What the country as a whole needs, as all participating in the hearings seemed to agree, is much larger terminals, more tracks, more cars, and more locomotives. This enlargement of our facilities is not required merely to meet the exigencies growing out of the war, but to keep our transportation facilities up to the measure of the country's growing volume of business. We are now a creditor nation, and it may reasonably be expected that the trade balance in our favor will continue at least for some years. With the aid of our new merchant marine, this may become a more or less permanent condition. With such a prospect before us, a foundation should be laid without delay for a definite plan for the development and building up of our transportation system. For seven or eight years, competent railroad officials have been warning us that the carriers are not keeping abreast of the requirements of the country. It is true that there are periods when a substantial part of the carriers' equipment is lying idle. On the other hand, the carriers can not prudently undertake to meet extreme and extraordinary demands. But a rough estimate of a billion dollars has been suggested as the yearly expenditure necessary to enable them to open up new territory and to enlarge and extend their present facilities in order to meet the rapidly growing volume of the general commerce of the country. No such investment, however, has been or is being made in our railroads. On the contrary an exhibit of record shows that beginning with 1895 the new construction increased year by year until 1910, while from the latter date it has steadily diminished. In other words, our population and commerce have largely expanded, but there has been no expansion, relatively speaking, in our transportation facilities.

For two years the commerce of the country has been moving under intermittent embargoes, an experience, as must be observed, that we

have had in the past not only while we were at peace, but while the world at large was also at peace. Great losses have resulted to the whole country. The producer and manufacturer, with ample supplies which the public was demanding, have been unable to make deliveries. The coal operator, with no shortage of coal at the mine, has not been able to deliver it promptly to those needing it. Prices for the necessities of life have increased, partly at least because existing supplies could not be brought to the consumer; and the speculator has been enabled to demand unreasonable prices because inadequate facilities have prevented the competition in the consuming markets of those who were prepared to furnish the same commodities at lower prices. Large industries have been greatly embarrassed. It was stated of record, for example, that the producers of lumber in one territory alone, with the materials at hand, have fallen 30,000 carloads short in meeting their orders during the past 12 months. Many other instances of car shortage and of extraordinary delays in the delivery of traffic are related of record, but they need not be detailed here. It will suffice to say that, while the strains of the war have much to do with the present transportation conditions, the one outstanding fact during the hearing, as to which there was no disagreement, was that our transportation system is lacking in the capacity to meet the demands of the shippers and that the resulting loss to the general public has been very large. This condition is one of present danger, with a possibility that it may even become disastrous during the war period. But aside from this military influence, the record leaves no doubt that our transportation system, as a whole, must be promptly enlarged and expanded.

The shippers of the country recognize the danger and have given expression to this apprehension upon the record. They regard a prompt and sound cure of the trouble as being as vital to them as to the carriers. Representatives of some of the largest industrial centers, officers of some of the largest traffic organizations, and officials of some of the most important shippers of the country, availed themselves at the hearing of the opportunity to refer to the situation, and to point out that in their own interest as shippers, and in the interest of the general shipping public, the rates of the carriers might well be increased in order that they may be put in a position to increase their terminals and facilities. Many earnest objections were of course made to any increase. Other shipping interests were ready to acquiesce in an increase provided no discriminations against them were involved. But the whole discussion, unusually free from selfish contentions on the part of the shippers, and approached by the carriers, as I understand the record, in no selfish spirit, leaves me with the conviction that the shippers at large are ready for a substantial increase in their rates, provided it will result in an early betterment

of their transportation service and in a rate structure free from discriminations. The record in my judgment demonstrates a proposition that has long been clear to me, namely, that a rate is a public question and that the existing rates, aside from any interest that the owners of our railroads may have in the matter, could well be advanced in the public interest, in order that assurance may thus be given for the early enlargement of our transportation facilities.

I express the thought in that way because it is clear that so long as we look to private interests to furnish a transportation service for the country we must see to it that the rewards are sufficient to attract capital for its further development. Under present conditions this appears not to be the case. Executives of great insurance companies and of great savings institutions testified during the hearings that the volume of their holdings in railroad securities has been steadily diminishing and that they and other large investors are looking with decreasing favor on railroad securities. Possibly this may result to some extent from an impression, which I think is very erroneous, that this Commission takes too narrow a view of such questions as are before us here. But, in any event, we must not overlook the fact that at this time, and apparently for the next few years, new capital must be sought by the carriers in competition with the demands of many governments for war loans and in competition with the very large returns of industrial companies. Nor must we overlook the fact that the returns on property investment in railroads, even under the unusually prosperous year 1916, were not such as to give any preference to the railway investor, and for the last 16 years this average return has been, using the principal and representative roads, for the eastern district 5.48, the southern 4.69, and the western 5.04 per cent.

Without extending this brief expression of my conception of the case, it will suffice to say that from the whole record it is clear to me that the 15 per cent increase proposed by the eastern carriers which in its actual results would probably not exceed 10 per cent should be permitted to become effective, subject, of course, to the understanding reached at the opening hearing that the carriers would later reduce them or restore the present rates if so requested by the Commission. The record shows that conditions with the western and southern lines are somewhat better than with the eastern carriers. Nevertheless, in my judgment, they also should be permitted some increase in their rates on the general grounds that I have attempted briefly to outline. In view, however, of the findings of the Commission's report, it will not be necessary to discuss the extent of the increase that they should have.

In the light of the refusal by the Commission of what, in my judgment, is sufficient additional revenues to the carriers, it seems appropriate

pritate again to call attention to the economies that may be and should be effected through the coordination of terminals, the elimination of unhealthy competition, the waste in service through the light loading of cars, and the performance of special services for particular shippers without charge. These matters I have discussed at some length elsewhere, and since my views upon them are more or less understood I will not enlarge upon them here. Much of the service at the larger industrial centers and ports is special in character and the heavy terminal cost encountered by the carriers in performing them is spread over the rate structure instead of being compensated under a special charge. The smaller communities grouped with the larger centers thus bear burdens that should be borne by others. Sooner or later matters of this kind must have serious attention by the Commission, and they will open sources of substantial additional revenues to the carriers.

MEYER, *Commissioner*, dissenting in part:

I concur in the conclusions with respect to carriers in western and southern territories. I dissent from the conclusion of the majority that an emergency exists in regard to carriers in the eastern district of such a character as to make it imperative to authorize at this time the increased class rates sanctioned by the majority.

Five members of the Commission, including myself, have virtually addressed the carriers in the western and southern districts as follows: "The things that you believed several months ago would happen have not yet happened. You therefore have not justified these increased rates. If any or all of the untoward events upon which your application for increased rates was largely based should occur in the future you may then bring them to our attention. In the light of what we have learned in this proceeding and in the light of what we may learn from your monthly reports as they will reach us from time to time hereafter we will be in a position on short notice, and with only brief supplementary proceedings, to decide whether, as a matter of justice to all, our orders of suspension should be vacated with respect to some or all of the suspended tariffs carrying the increased rates. This will enable us to protect the interests which you represent, in so far as we may lawfully do so, and the entire people of this country against any possible situation which might cripple your respective properties in the performance of their public functions during this critical period of American history." This same language should be addressed to the eastern carriers.

I recognize freely that the results of operation for eastern carriers during recent months have been less favorable than for the western and the southern. Certain tendencies are unmistakably unfavorable. It is difficult to characterize with moderation many of the prices of

materials and supplies and fuel which these carriers have paid and which apparently they will pay for some time to come. These together with higher wages tend with certainty toward more unfavorable operating results. We have authorized increases in the rates on bituminous coal, coke, and ore which will add to the operating incomes of these carriers many millions of dollars and which will bring the estimated return on the book cost of the carriers up to a level which in my judgment disproves the theory of an acute contemporary emergency demanding drastic action at this moment. In spite of increased and increasing expenses, there is nothing before us to prove conclusively that the net returns of carriers in the eastern district for the calendar year 1917 may not be more favorable than the net returns for all but a very small number of years during their entire history. But even if the contrary could be demonstrated, it does not necessarily follow that the increases authorized by the majority should be authorized at this time. Whenever the time may come, if it should come, that a real emergency can be shown to exist, we can then do promptly what justice and the law may demand. Before important action like this is taken the most conclusive proof of its necessity should be before the Commission. If I apply to the facts now before us the same test which I applied to the facts before the Commission in the great advanced rate cases that have preceded this one I am forced to a different conclusion regarding eastern carriers than that reached by the majority.

As stated in the majority report, while the instant case transcends all preceding ones in the magnitude of the sums involved, in its essential characteristics and fundamental factors it is identical with them.

From the proceedings of 1910 and 1911 to the present time all of these cases have involved the consideration and weighing one against the other of certain common fundamental factors. The relation of these factors to one another, and certain attendant features alone have varied, not the factors themselves. This lack of identity in the relationship and surroundings of the individual factors accounts for the differences in the conclusions arrived at by us in the successive proceedings.

In the advanced rate cases which terminated in February, 1911, we considered gross operating revenues, operating expenses, net operating income, operating ratios, rates of interest, rates of dividend, book costs and book values, the volume and character of securities, and allied factors during a succession of years, and interpreted these in the light of numberless other facts of record. As an attendant feature much consideration was given upon the record to questions of economy and efficiency. At that time we considered earnestly

whether or not in the light of all the facts before us certain increases should be authorized. In a separate proceeding involving the southwestern lines we then authorized increases, but finally concluded that conditions as a whole did not demand authorization of increases in the official and western classification territories. As is attested by the language used and unanimously approved by us in various proceedings affecting the rates on commodities which move in great volume, the facts established in the proceedings of 1910 and 1911 left their impress upon our minds, and to a certain extent shaped our action during the period intervening between February, 1911, and July, 1914, the date of the report in the second great advance movement.

In July, 1914, we again had before us a voluminous record upon which carriers based their claims for increased revenues. After considering the same group of factors which we had considered in 1911 but which had changed to a certain extent in their relative weight and relationship, and which were accompanied by the special features of allowances to industrial railways and the performance of accessorial services, we arrived at the conclusion that the increased rates prayed for had not been justified in their entirety.

Six months later, in December, 1914, in a further hearing, for the third time we had before us the same prayer of the carriers and the same group of factors which had been given consideration during the previous proceedings. The hearings which followed our decision of July, 1914, added to the record as made prior to July, 1916, certain significant facts. These, together with the intervening suspension of various tariffs in which it was proposed to assess charges on certain accessorial and so-called free services and the course of the proceedings with reference to industrial railways, compelled a modification of the conclusions reached in July, 1914, with respect to sources through which the carriers might augment their revenues and of our specific findings in that case. The relative weight of fundamental facts of record had changed, which in turn required a changed conclusion. In this connection I refer to Tables 13 to 21, inclusive, which reflect operating results through the entire period embracing all of the important increased rate proceedings. They are the tables used in our reports of July, 1914, and December, 1914, brought down to date. I direct especial attention to Tables 13, 14, 15, and 16, which clearly indicate the improvement in operating results following December, 1914, and likewise reflecting the decline since the fall of 1916.

During 1915 we dealt with two similar proceedings, one involving freight rates and the other passenger fares. Once more we considered the identical set of factors. We weighed and compared

as we had weighed and compared in 1911 and 1914. Our conclusions differed from the conclusions in the earlier proceedings to the extent to which the weight and relationship of these factors differed from the weight and relationship of the factors in the antecedent proceedings.

In the instant case we have before us once more the now familiar aggregation of basic factors. Again we have considered them by themselves and in their relationship to one another, and we have assessed them in the light of the attendant facts and circumstances of record. Applying the same kind of reasoning and the same methods which have prevailed in the earlier proceedings to the facts upon the present record, I have reached the conclusion that the proposed increased rates have not been justified. The majority holds that the eastern carriers have justified certain increased rates. My convictions are to the contrary.

The year 1916 is admitted by all to have been an abnormally prosperous year for the class I railways of the eastern district, as well as for those of the entire country. The banner year prior to 1916 was 1913. In 1913 the operating revenues in the eastern district amounted, for the four months January to April, inclusive, to \$7,241 per mile of road; the next best year prior to 1916 was 1915, in the corresponding four months of which this item was \$6,653, although for these four months it was surpassed by 1914, in which the item amounted to \$6,850. For the like period of 1916 the item had risen to \$8,528, an increase of 17 per cent over 1913, and for the like period of 1917 it had further risen to \$9,056, an increase more than 6 per cent over the figure for 1916.

It is argued, however, that expenses are rising much faster than revenues and that the outlook is so unfavorable that in the opinion of the majority it is necessary at once to authorize an increased class scale of rates.

The carriers are primarily interested not in operating revenues nor in operating expenses, but in the margin between them, in what remains of operating revenues after operating expenses and taxes have been deducted, or operating income. The operating income per mile of road in the eastern district for the first four months of 1916 was far in advance of that of any prior year for which the figures have been compiled from our monthly reports, being \$2,188 as against \$1,394 for the like period of 1911. The largest figure for this period for any of the intermediate years was \$1,340 for 1913. The corresponding figure for the like period of 1917, within which the flood of increasing costs was expected to be upon us, was \$1,582, an amount more than 13 per cent better than for that period of any of the preceding six years except the abnormal year of 1916.

It is too early for most of the May reports of the large carriers to have reached us, and at the time of writing only two of the principal carriers have filed their reports for May. While it probably would be incorrect to say that these two are typical, it is not without significance to point out that the operating income of the Southern Pacific Company for May, 1917, is more than 30 per cent greater than for May, 1916, and that while that of the Delaware, Lackawanna & Western, the only large eastern carrier whose last monthly report has been received, shows a falling off, it is yet substantially greater than for any May in the four years preceding 1916. The figures for the Delaware, Lackawanna & Western for the month of May for the last 10 years are shown hereunder:

May.	Operating revenues.	Operating income.	Miles.	May.	Operating revenues.	Operating income.	Miles.
1917.....	\$5,052,622	\$1,546,259	955.12	1912.....	\$2,406,372	\$ 353,995	958.60
1916.....	4,463,151	1,618,061	955.06	1911.....	3,110,664	1,075,911	930.09
1915.....	3,713,265	1,243,873	958.63	1910.....	3,079,225	1,200,412	930.79
1914.....	3,706,838	1,046,880	959.81	1909.....	2,819,060	1,142,954	893.18
1913.....	3,569,323	1,166,203	958.20	1908.....	2,955,361	1,162,602	893.18

In our reports relating to advanced rate cases which have preceded this one more or less has been said about operating ratios. I fully appreciate the limitations inherent in the use of operating ratios. However they have been among the more prominent factors which appear upon the respective records and in our reports. The table below states the operating ratios for all class I carriers in the eastern district for the first four months of each of the last 10 years:

Table of operating ratios for class I steam railways, eastern district.

Month.	1917	1916	1915	1914	1913	1912	1911	1910	1909	1908
January.....	76.35	70.66	80.68	83.91	76.44	79.16	77.34	72.44	74.71	79.75
February.....	86.15	71.78	79.77	88.97	78.01	77.10	77.97	73.12	75.01	80.82
March.....	77.04	69.98	74.04	78.31	78.87	71.94	71.47	68.47	68.88	73.99
April.....	74.79	68.73	70.97	76.47	78.06	77.61	69.23	70.30	68.52	71.85

An examination of this table shows conclusively that so far as operating ratios may be used as a barometer, the first four months of 1917 do not necessarily predict unfavorable results for the entire year. In fact it will be observed that for the banner year 1913, three out of the four operating ratios were more unfavorable than the corresponding ratios for 1917. I would be unwilling to state that this necessarily indicates that 1917 will result in larger net incomes than 1913, but I am equally unwilling to agree that the ratios for 1917 and the relatively unfavorable indications of certain other factors together support the conclusion that an emergency now exists

which requires an immediate increase in the scale of class rates. Future events may justify this increase. Events up to the present have not done so.

McCHORD, *Commissioner*, dissenting:

Upon the facts before us, I concur in the dissent by COMMISSIONER MEYER. The issue presented is in reality one largely of governmental policy, rather than a question whether the rates sought to be made effective July 1 are reasonable for the service of transportation. The nation is at war, costs of fuel and other commodities are abnormal, the conditions affecting the volume and movement of traffic are without precedent. The future of these conditions, immediate or remote, can not be predicted with even a fair degree of certainty. Thus the situation before us is not sufficiently normal or stable in character to make possible an intelligent inquiry into the reasonableness of rates. That the operating costs of certain carriers, particularly in eastern territory, have been substantially increased by the increased costs of fuel and supplies is apparent.

Should this Commission upon the showing here made approve an increase of rates predicated in a large measure upon prophecies for the future, to strengthen the credit of the carriers, or should the prices of fuel and supplies be supervised by governmental authority? It is argued with much force that this is a question for the Congress to determine and that until it is clear that such control will not be exercised and that the carriers' fears as to what may happen in the future have been realized, this Commission can not be justified in placing the burden upon the general public in the form of increased rates, especially in view of the showing made by the carriers as to their earnings. At the present moment it appears probable that the Congress will act in the matter. The Committee on Interstate and Foreign Commerce of the Senate is now holding hearings on the general subject of the control of prices. Coal operators have been in conference with the Federal Trade Commission and other government officers on the same subject. It appears that a special committee representing coal operators in all sections of the country has proposed that prices of coal during the war be fixed by a joint governmental commission. Congress has now before it the report and recommendations of the Federal Trade Commission on the bituminous coal situation. No report has yet been made to the Congress by the commission appointed by the President to observe the operation and effects of the so-called Adamson law. It may be fairly said that the matter of the governmental control of prices of various important commodities affecting these carriers is now before the Congress.

With reference to the assertion that prices of certain commodities are affected by car supply it should be remembered that by the car-service act, approved May 29, 1917, the Congress has given this Commission full authority over the movement, distribution, exchange, interchange, and return of cars, and I do not doubt that through a vigorous exercise of that authority substantially better transportation conditions and additional revenue can be secured.

It is my judgment, therefore, that this Commission should report to the Congress the essential facts disclosed by this record. If it should be determined by that body that the prices demanded of the carriers for fuel and supplies are reasonable under present conditions, or are not such as to warrant control by the government, and it should hereafter appear that the apprehensions expressed by the carriers have been realized, then I am prepared to sanction such rate increases as will permit the carriers to so equip themselves as to enable them to perform, in the most efficient manner, the transportation required of them. Those apprehensions were expressed by the chairman of the carriers' presidents committee on March 22, 1917, in the opening paragraph of his statement to the Commission in this case, as follows:

MR. CHAIRMAN AND GENTLEMEN OF THE COMMISSION: We are here on what we regard as a very serious question. We realize that the conditions of the railroads to-day present a menace to the country, not alone to the owners of the properties, but as affecting directly the international situation. It is absolutely essential that the railroads of this country shall be in splendid working order, not merely workable physically, but in a position to fulfill their full duties to meet what we all believe is coming—a crisis in our history; and to do it effectively and properly.

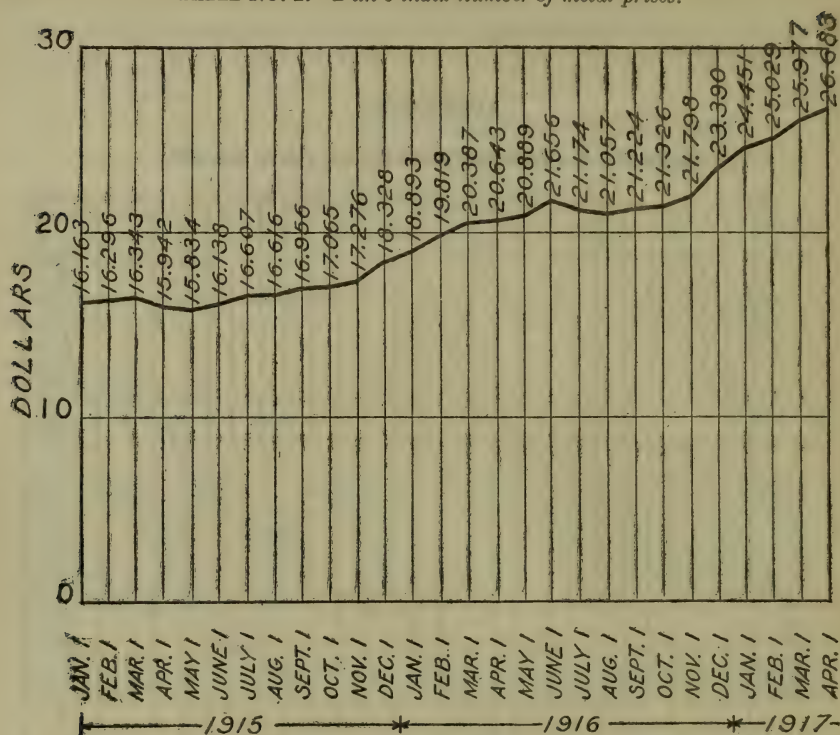
Operating revenues sufficient to enable the carriers to perform their full duties are unquestionably required. In the event that the apprehensions expressed by the carriers are realized and increased charges for transportation become necessary, I would not limit those increases to certain classes of traffic, nor, in the absence of very clear proof of differences in conditions, to particular sections of the country. Rate increases, made necessary by war conditions, should be borne by all sections of the country and all classes of traffic, in so far as influences of those conditions are national in scope.

It is admitted by the carriers that they do not seek the increase in freight rates for the purpose of purchasing additional equipment, motive power, or extension of terminals, but for the sole purpose of paying increased cost of wages, material, fuel, and supplies.

APPENDIX.

TABLE No. 1.—Iron and steel prices, *Dun's Review*.



TABLE NO. 2.—*Dun's index number of metal prices.*

Metals include various quotations of pig iron and partially manufactured and finished products, as well as minor metals, coal and petroleum.

TABLE NO. 3.—*Statement showing cost of freight cars in 1917 as compared with prices in 1916 or prior thereto.*

Carrier.	Unit.	1916	1917	Remarks.
W. Md. Ry. Co.....	Each....	\$1,034.69	\$1,529.31	Coal cars.
No. Pac. Ry. Co.....	...do....	¹ 1,041.98	2,175.00	Gondolas. Last lot purchased in 1913.
Peerless Transit Line.....	...do....	\$900 to \$1,100	2,475.00	Refrigerator cars. Last lot purchased in 1913.
Pa. Lines East.....	...do....	1,466.00	\$3,750 to over \$4,000	\$900 to \$1,100 shown simply as "former price." The "over \$4,000" is price for immediate delivery.
Ill. Central R. R. Co.....	...do....	1,500.00	3,742.00	Steel coal cars.
C. & O. lines.....	...do....	1,681.95	3,555.00	Steel box cars.
C. & B. & Q. R. R. Co.....	...do....	948.80	1,531.03	
A., B. & A. Ry. Co.....	...do....	² 808.00	² 1,540.00	Box cars.
		² 1,637.00	² 1,891.00	Gondolas.
(This company has had bid submitted in 1917 of \$42,510 for 2 combined steel baggage, mail, and express cars. This compares with the price paid the same company in 1916 for 2 units of same equipment of \$23,640.)				
So. Pac. Co.....	...do....	\$1,468.05	\$2,806.96	Oil tank cars.
		1,294.76	1,918.60	Gondola cars.
		9,785.54	12,319.26	Combination baggage and mail cars.

¹ 1913.² 1915.³ 1916 price is for 1917 delivery.

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TABLE NO. 4.—Statement showing prices paid for locomotives in 1917 as compared with 1916 or prior thereto.

Carrier.	Unit.	1916	1917	Remarks.
D. & H.	Each.			Price of a locomotive 25 per cent larger than former ones is 200 per cent higher.
W. Md. Ry. Co.	do.	\$37,276.11	\$86,531.14	
T., St. L. & W. R. R.	do.	19,452.74	24,315.92	
No. Pac. Ry. Co.	do.	142,025.76	61,200.00	Class Z-2 locomotives.
Union Pacific	do.	127,977.40	42,700.00	Class W locomotives (January delivery).
N. Y. C. & St. L.	do.	42,700.00	61,950.00	Class W locomotives (April delivery).
	do.	14,913.00	26,780.00	Switching locomotives.
	do.	19,250.00	23,375.00	1917 locomotives bought under option given November, 1916. If bought in open market would have cost \$31,750.
Pa. Lines east.	do.	39,000.00	63,000.00	Freight locomotives.
C. I. & L. Ry. Co.	do.	31,300.00	59,000.00	2-10-2 type.
	do.	222,205.00	41,660.70	Mikado locomotives.
Ill. Central R. R.	do.	12,400.00	28,756.28	Switching locomotives.
	do.	27,818.00	42,934.99	Pacific passenger locomotives.
C. & O. lines	do.	31,019.41	48,138.63	Freight and switching locomotives.
C. B. & Q. R. R. Co.	do.	226,518.00	46,450.00	Type 2-10-2 freight. ^a
	do.	222,017.00	42,505.00	Mikados.
N. & W. Ry. Co.	do.	43,360.34	77,500.00	Quotation not accepted and none bought.
Pere Marquette Ry. Co.	do.	(Not shown)	56,250.00	2-10-2 type.
	do.		38,900.00	Switchers.
So. Ry. Co.	do.	38,400.00	73,850.00	Santa Fe type.
	do.	26,483.10	36,850.00	8-wheel switchers.

¹ 1913.^a 1915.^a 1916 price for 1917 delivery.

TABLE NO. 5.—Comparison of fuel prices per ton.

EASTERN DISTRICT.

	1916	1917
N. Y., N. H. & H.	\$1.25	\$3.98
Water freight charges	.60	4.50
Rail freight charges	1.50	1.50
B. & O.	1.10	1.58
Philadelphia & Reading	1.56	2.355
Central of N. J.	2.462	3.334
Do.	1.15	2.68
Great Lakes Transit Corporation	2.75	5.25
Erie Railroad	1.35	2.50
Do.	1.20	2.05
Pennsylvania Lines West		(1)
Pennsylvania Lines East		(2)
Chesapeake & Ohio	1.0552	1.50
Boston & Maine	1.25	3.15
Added water freight	.60	4.50
Maine Central	3.54	5.54
Bangor & Arcootook	3.37	4.81

SOUTHERN DISTRICT.

Norfolk & Western	\$1.26	\$2.24
Southern Ry.	.94	1.61
Do.		2.00
Seaboard Air Line	1.076	2.169
A. B. & A.	1.338	2.16
Atlanta & West Point	1.20	2.05
Central of Georgia	1.26	1.66
Contract expires July, 1917, and will thereafter be higher.		

WESTERN DISTRICT.

Chicago & North Western	\$0.90	\$1.25
Do.	1.90	2.70
Chicago & North Western Lake Coal	3.00	6.00
So. Pac. Co.	3.27	5.15
St. L. & S. F.	1.65	2.20
Northern Pacific	3.05	6.00
Union Pacific	1.18	1.535
Do.	1.42	2.45

¹ Increase of 68 cents.^a Increase of 90 cents.

TABLE No. 6.—Dun's index number of prices.

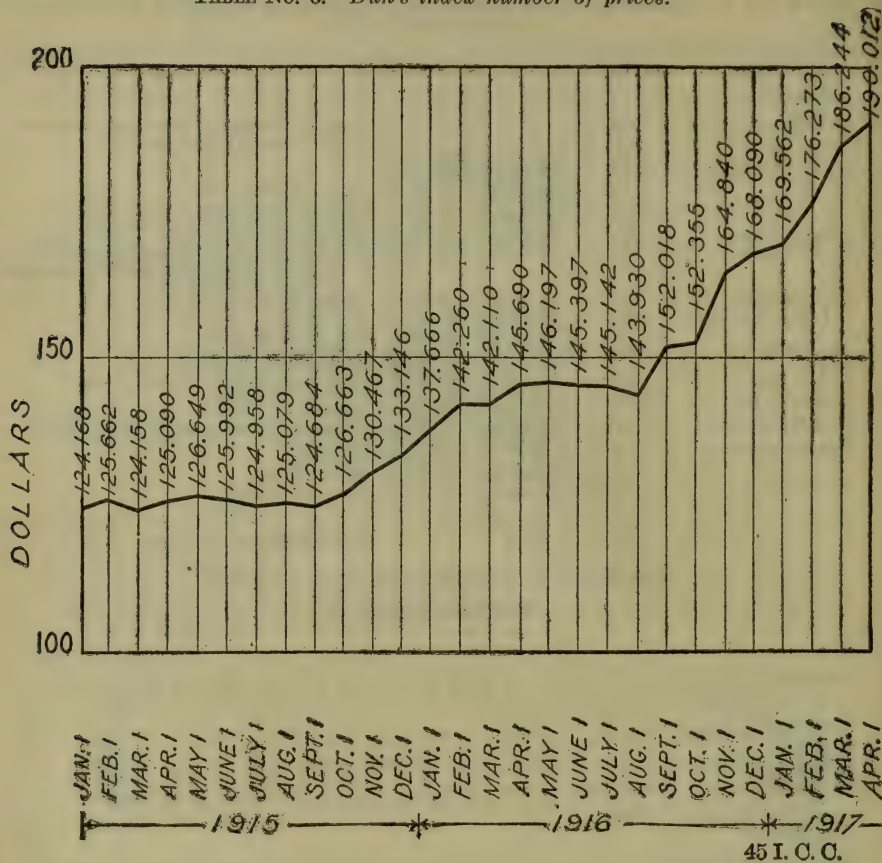
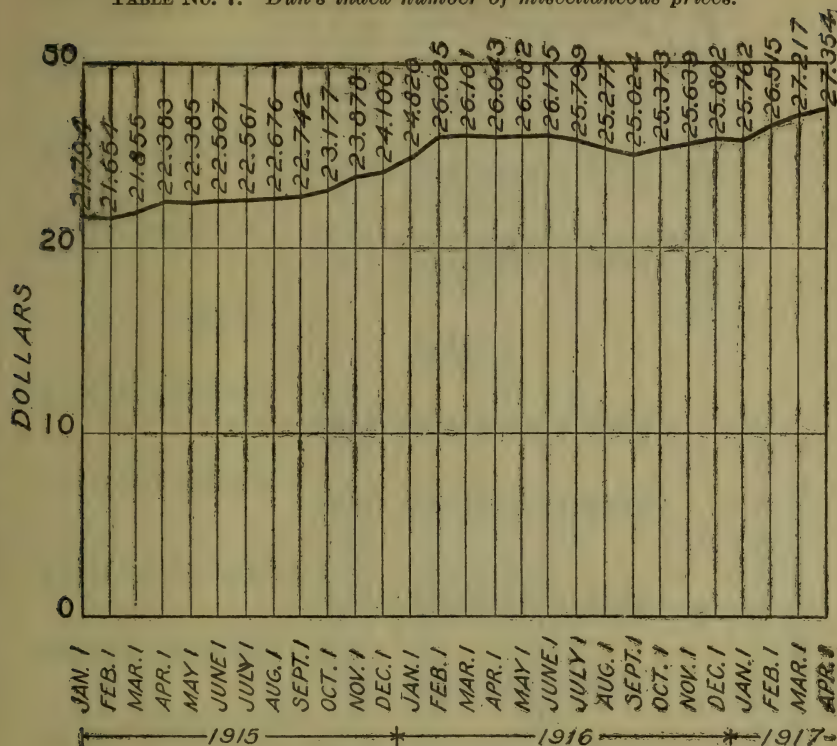


TABLE No. 7.—Dun's index number of miscellaneous prices.



The miscellaneous class embraces many grades of hard and soft lumber, lath, brick, lime, glass, turpentine, hemp, linseed oil, paints, fertilizers and drugs; and does not include metals.

TABLE No. 8.—United States—Class I carriers by railway.

AVERAGE OPERATING REVENUES PER MILE OF ROAD.

	1917	1916	1915	1914	1913	1912	1911	1910	1909	1908	1907	Average, 1908-1910.	Average, 1911-1913.	Average, 1914-1916.	Average, 1915-16.
January.....	\$1,301	\$1,133	\$839	\$1,021	\$1,087	\$831	\$930	\$923	\$822	\$795	.....	\$847	\$983	\$1,031	\$1,036
February.....	1,147	1,141	900	914	1,011	964	861	887	782	736	.....	802	945	985	1,027
March.....	1,373	1,260	1,015	1,092	1,081	1,051	981	1,043	922	838	.....	934	1,038	1,122	1,137
April.....	1,383	1,223	1,013	1,038	1,064	974	942	988	882	799	.....	890	993	1,091	1,118
4 months.....	5,204	4,757	3,867	4,065	4,243	3,920	3,714	3,841	3,408	3,168	.....	3,472	3,959	4,230	4,312
May.....	.....	1,307	1,044	1,047	1,156	1,030	990	1,025	901	796	.....	907	1,057	1,133	1,175
June.....	.....	1,302	1,094	1,097	1,135	1,075	998	1,040	941	837	.....	939	1,069	1,164	1,198
July.....	.....	1,315	1,130	1,127	1,183	1,112	1,025	1,016	977	882	.....	958	1,107	1,191	1,223
August.....	.....	1,418	1,190	1,174	1,241	1,211	1,119	1,110	1,044	834	.....	1,029	1,190	1,261	1,304
September.....	.....	1,409	1,251	1,185	1,257	1,206	1,137	1,117	1,085	990	.....	1,064	1,200	1,282	1,330
October.....	.....	1,466	1,323	1,171	1,314	1,311	1,175	1,146	1,147	1,048	.....	1,152	1,267	1,320	1,395
November.....	.....	1,396	1,303	1,026	1,180	1,213	1,093	1,079	1,090	955	.....	1,041	1,162	1,242	1,349
December.....	.....	1,345	1,253	993	1,116	1,159	1,046	1,028	969	926	.....	1,074	1,107	1,197	1,299
12 months end- ing Dec. 31....	17,104	15,715	13,455	12,885	13,819	13,237	12,297	12,402	11,562	10,536	.....	11,500	13,118	14,018	14,585
Ratio 12 mos./4 mos....	1 3.287	3.303	3.479	3.170	3.256	3.377	3.311	3.230	3.393	3.326	.....	3.312	3.313	3.315	3.383

AVERAGE OPERATING INCOME PER MILE OF ROAD.

January.....	\$311	\$281	\$172	\$176	\$238	\$158	\$104	\$214	\$104	\$160	.....	\$189	\$197	\$210	\$227
February.....	188	286	171	118	212	208	176	211	183	141	.....	180	199	282	229
March.....	319	361	244	240	225	280	260	304	281	223	.....	269	251	282	302
April.....	332	342	240	200	214	212	241	254	249	203	.....	235	222	283	291
4 months.....	1,150	1,270	827	740	899	838	871	983	912	727	.....	874	809	946	1,049
May.....	.....	395	269	195	273	250	262	275	263	201	.....	246	262	283	327
June.....	.....	392	311	256	284	283	276	292	292	242	.....	275	284	320	351
July.....	.....	411	329	291	298	319	287	286	215	276	.....	292	301	344	370
August.....	.....	476	375	336	338	384	353	334	368	312	.....	345	362	396	425
September.....	.....	468	425	352	354	387	370	363	386	341	.....	363	370	415	447
October.....	.....	495	455	333	372	441	381	369	423	370	.....	387	398	428	475
November.....	.....	441	449	243	284	363	314	327	380	305	.....	337	320	378	445
December.....	.....	375	337	218	245	314	280	264	262	279	.....	268	280	330	386
12 months ending Dec. 31...	14,334	4,723	3,827	2,964	3,347	3,599	3,394	3,512	3,601	3,053	.....	3,389	3,446	3,838	4,275
Ratio 12 mos./4 mos..	13.769	3.718	4.628	4.006	3.728	4.294	3.837	3.572	3.948	4.200	.....	3.877	3.966	4.089	4.077
Average investment per mile of road at June 30.....	174,500	73,789	73,045	72,466	71,434	67,902	66,943	65,631	61,391	61,779	.....	.....	.....	.....	.....
Ratio operating income to average investment, per cent..	15.817	6.400	5.240	4.091	4.683	5.300	5.070	5.519	5.866	4.941	.....	.....	.....	.....	.....

1 Estimated.

TABLE NO. 9.—*Eastern district—Class I carriers by railway.*

AVERAGE OPERATING REVENUES PER MILE OF ROAD.

	1917	1916	1915	1914	1913	1912	1911
January.....	\$2,245	\$2,073	\$1,591	\$1,700	\$1,870	\$1,596	\$1,587
February.....	1,961	2,041	1,506	1,507	1,718	1,612	1,443
March.....	2,426	2,219	1,742	1,849	1,808	1,836	1,678
April.....	2,424	2,195	1,814	1,794	1,845	1,583	1,659
4 months.....	9,056	8,528	6,653	6,850	7,241	6,627	6,367
May.....		2,370	1,873	1,818	2,022	1,728	1,751
June.....		2,363	1,973	1,905	1,909	1,897	1,776
July.....		2,380	2,011	1,935	2,087	1,923	1,753
August.....		2,504	2,120	2,043	2,185	2,108	1,829
September.....		2,451	2,185	2,022	2,142	2,021	1,903
October.....		2,482	2,296	1,958	2,184	2,142	1,916
November.....		2,353	2,232	1,715	1,949	1,997	1,787
December.....		2,257	2,175	1,655	1,878	1,928	1,741
12 months ending Dec. 31.	1 29,432	27,688	23,518	21,901	23,687	22,371	20,923
Ratio 12 months/4 months.....	1 3.250	3.247	3.535	3.197	3.271	3.375	3.286

AVERAGE OPERATING INCOME PER MILE OF ROAD.

	1917	1916	1915	1914	1913	1912	1911
January.....	\$434	\$520	\$227	\$195	\$376	\$267	\$291
February.....	176	489	227	88	311	306	247
March.....	460	578	372	321	315	456	412
April.....	512	601	447	343	338	294	444
4 months.....	1,582	2,188	1,273	947	1,340	1,323	1,394
May.....		721	483	317	468	402	483
June.....		699	590	422	484	549	505
July.....		741	613	485	506	590	507
August.....		807	691	589	577	695	630
September.....		745	740	569	529	609	590
October.....		726	760	496	493	658	567
November.....		623	721	330	347	533	478
December.....		532	625	277	318	450	434
12 months ending Dec. 31.	1 5,802	7,782	6,496	4,432	5,062	5,780	5,588
Ratio 12 months/4 months.....	1 3.667	3.557	5.102	4.681	3.778	4.368	4.009
Average investment per mile of road at June 30.....	1 118,600	116,800	115,080	.....	.....	.....	.....
Ratio operating income to average investment..... per cent..	1 4.893	6.662	5.644	.....	.....	.....	.....

¹ Estimated.

45 I. C. C.

TABLE No. 10.—*Southern district—Class I carriers by railway.*

AVERAGE OPERATING REVENUES PER MILE OF ROAD.

	1917	1916	1915	1914	1913	1912	1911
January.....	\$1,111	\$956	\$796	\$933	\$931	\$799	\$843
February.....	1,012	967	764	850	890	843	796
March.....	1,145	1,050	867	981	954	904	882
April.....	1,120	987	850	901	854	855	792
4 months.....	4,388	3,960	3,277	3,665	3,629	3,401	3,313
May.....		1,024	833	889	922	857	803
June.....		968	817	865	862	820	769
July.....		931	842	887	875	837	787
August.....		1,028	874	889	908	892	845
September.....		1,028	925	862	943	875	867
October.....		1,116	980	863	1,042	980	901
November.....		1,113	981	792	985	939	874
December.....		1,129	1,012	829	1,011	958	889
12 months ending Dec. 31.	¹ 13,610	12,297	10,541	10,541	11,177	10,559	10,048
Ratio 12 mos./4 mos.....	¹ 3.100	3.105	3.216	2.876	3.079	3.105	3.036

AVERAGE OPERATING INCOME PER MILE OF ROAD.

	1917	1916	1915	1914	1913	1912	1911
January.....	\$335	\$273	\$168	\$201	\$224	\$143	\$220
February.....	269	285	156	168	219	207	215
March.....	328	328	221	249	248	233	261
April.....	290	295	211	185	164	195	199
4 months.....	1,222	1,181	756	803	855	779	905
May.....		317	202	174	201	200	197
June.....		294	189	175	189	191	182
July.....		240	202	184	180	181	196
August.....		309	227	193	198	229	230
September.....		307	268	182	232	223	253
October.....		371	292	191	294	280	261
November.....		374	299	165	254	246	227
December.....		386	330	205	278	273	251
12 months ending Dec. 31.	¹ 3,872	3,779	2,765	2,272	2,681	2,602	2,702
Ratio 12 mos./4 mos.....	¹ 3.168	3.200	3.657	2.829	3.136	3.341	2,986
Average investment per mile of road at June 30.....	¹ 60,000	59,140	58,385	.....	.....	.....	.....
Ratio operating income to average investment..... per cent..	¹ 6.453	6.390	4.736	.....	.....	.....	.....

¹ Estimated.

TABLE NO. 11.—*Western district—Class I carriers by railway.*

AVERAGE OPERATING REVENUE PER MILE OF ROAD.

	1917	1916	1915	1914	1913	1912	1911
January.....	\$930	\$759	\$684	\$733	\$770	\$658	\$693
February.....	818	783	663	659	719	694	649
March.....	964	888	728	776	781	725	733
April.....	993	855	697	733	768	722	700
4 months.....	3,705	3,285	2,772	2,901	3,038	2,799	2,775
May.....		912	730	742	816	755	743
June.....		924	780	798	820	770	759
July.....		951	819	830	861	818	757
August.....		1,047	866	865	910	892	825
September.....		1,057	929	904	948	930	861
October.....		1,116	988	908	998	1,029	912
November.....		1,050	980	784	886	934	835
December.....		998	909	740	795	865	768
12 months ending Dec. 31.	1 12,597	11,340	9,773	9,472	10,072	9,792	9,235
Ratio 12 months/4 months.....	1 3.400	3.452	3.525	3.265	3.315	3.498	3.328

AVERAGE OPERATING INCOME PER MILE OF ROAD.

	1917	1916	1915	1914	1913	1912	1911
January.....	\$247	\$174	\$148	\$159	\$178	\$111	\$145
February.....	167	193	150	116	163	162	139
March.....	251	272	192	199	192	176	203
April.....	265	238	154	149	173	179	174
4 months.....	930	877	644	623	706	628	661
May.....		272	174	145	206	194	197
June.....		282	223	205	222	205	217
July.....		316	241	236	241	250	213
August.....		380	278	267	273	306	262
September.....		394	332	308	312	338	304
October.....		430	369	304	340	392	333
November.....		379	372	229	265	322	266
December.....		300	314	196	200	263	217
12 months ending Dec. 31.	1 3,813	3,630	2,947	2,513	2,765	2,898	2,670
Ratio 12 months/4 months ¹	1 4.100	4.139	4.576	4.034	3.916	4.614	4.039
Average investment per mile of road at June 30.....	1 61,330	60,985	60,630				
Ratio operating income to average investment.....per cent..	1 6.217	5.953	4.861				

¹ Estimated.TABLE NO. 12.¹—*Comparison of tons of revenue freight originating on the lines of carriers having operating revenues in excess of \$100,000 per annum, during the year ended June 30, 1916, with those for the year ended June 30, 1913, the best prior year with respect to amounts of freight carried.*

Commodity.	Year ended June 30, 1916.			Year ended June 30, 1913.		
	Eastern district.	Southern district.	Western district.	Eastern district.	Southern district.	Western district.
	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>
Grain.....	11,611,473	4,169,693	39,376,450	10,835,799	4,975,023	35,133,842
Fruit and vegetables.....	6,692,047	1,779,324	9,493,018	6,079,360	1,754,720	8,265,274
Total products of agriculture.....	28,374,843	13,717,806	70,188,813	26,973,005	14,114,467	64,979,845
Total products of animals.....	10,548,878	2,466,126	16,688,041	8,926,737	2,598,745	14,920,900
Anthracite coal.....	75,998,331	43,290	3,193,751	76,274,039	51,493	3,233,517
Bituminous coal.....	189,260,756	96,318,879	51,213,937	182,411,156	75,567,418	53,163,543
Coke.....	29,644,219	4,733,384	2,996,119	29,726,373	4,925,607	2,909,688
Total products of mines.....	371,626,877	122,645,664	208,079,980	359,230,979	101,003,003	190,706,271
Total products of forests.....	21,705,556	29,967,633	52,086,844	23,431,387	30,789,088	57,858,689
Total manufactures.....	128,359,103	20,009,709	37,868,922	110,483,255	19,641,814	35,406,966
Grand total.....	617,636,659	199,126,576	408,860,876	578,382,786	178,688,390	387,769,127

¹ These figures are from the reports as of the date of this report. They are subject to some changes due to corrections made or to be made by individual carriers.

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TABLE No. 14.—Comparison of increase in property investment and traffic.

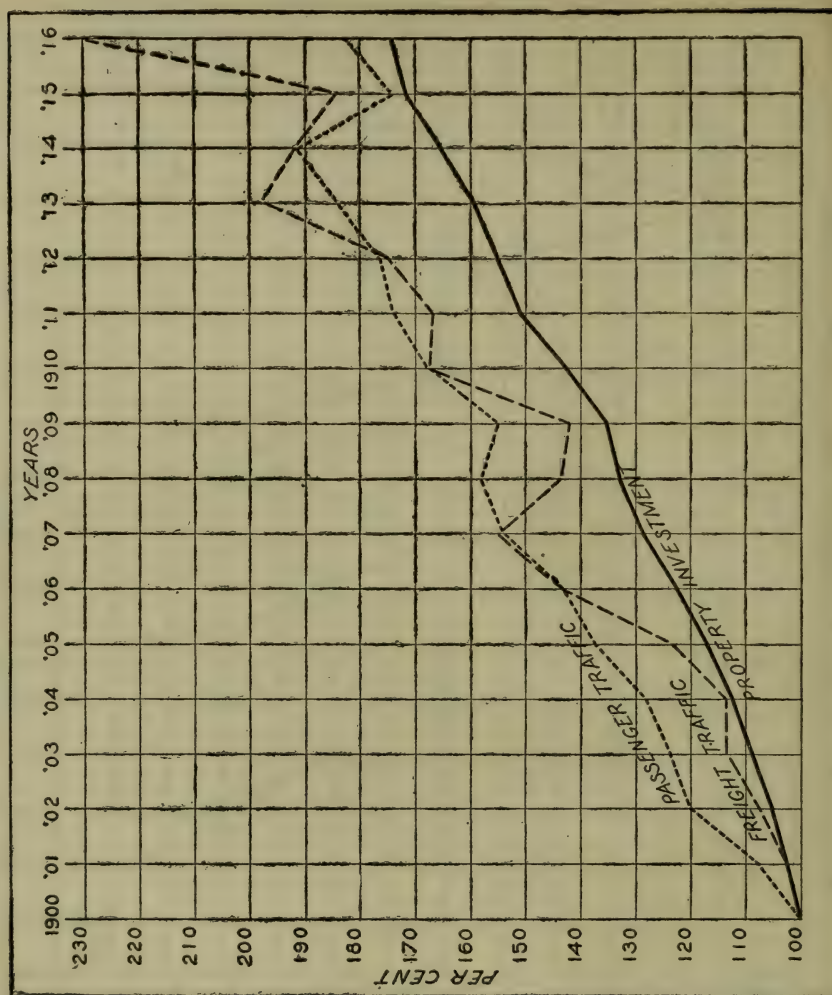


TABLE No. 15.—Ratio of net operating income to property investment.

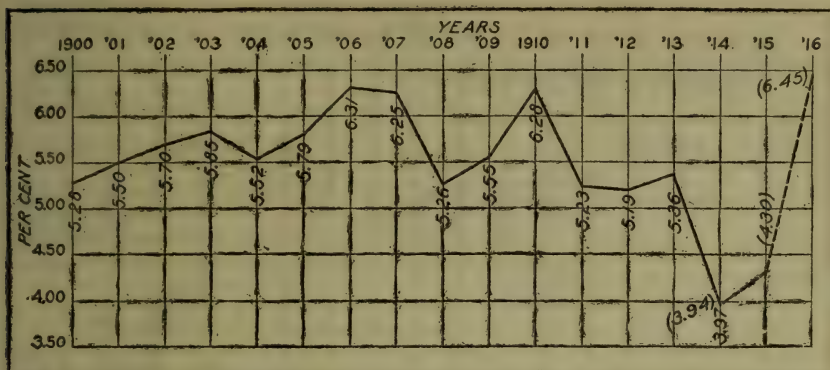


TABLE No. 16.—Ratio of total operating revenue to property investment.

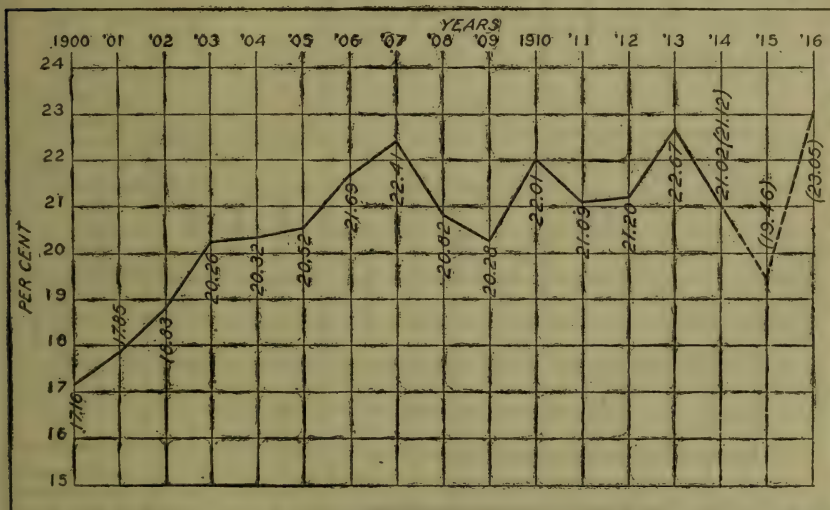


TABLE No. 17.—Ratio of groups of operating expenses to operating revenues.

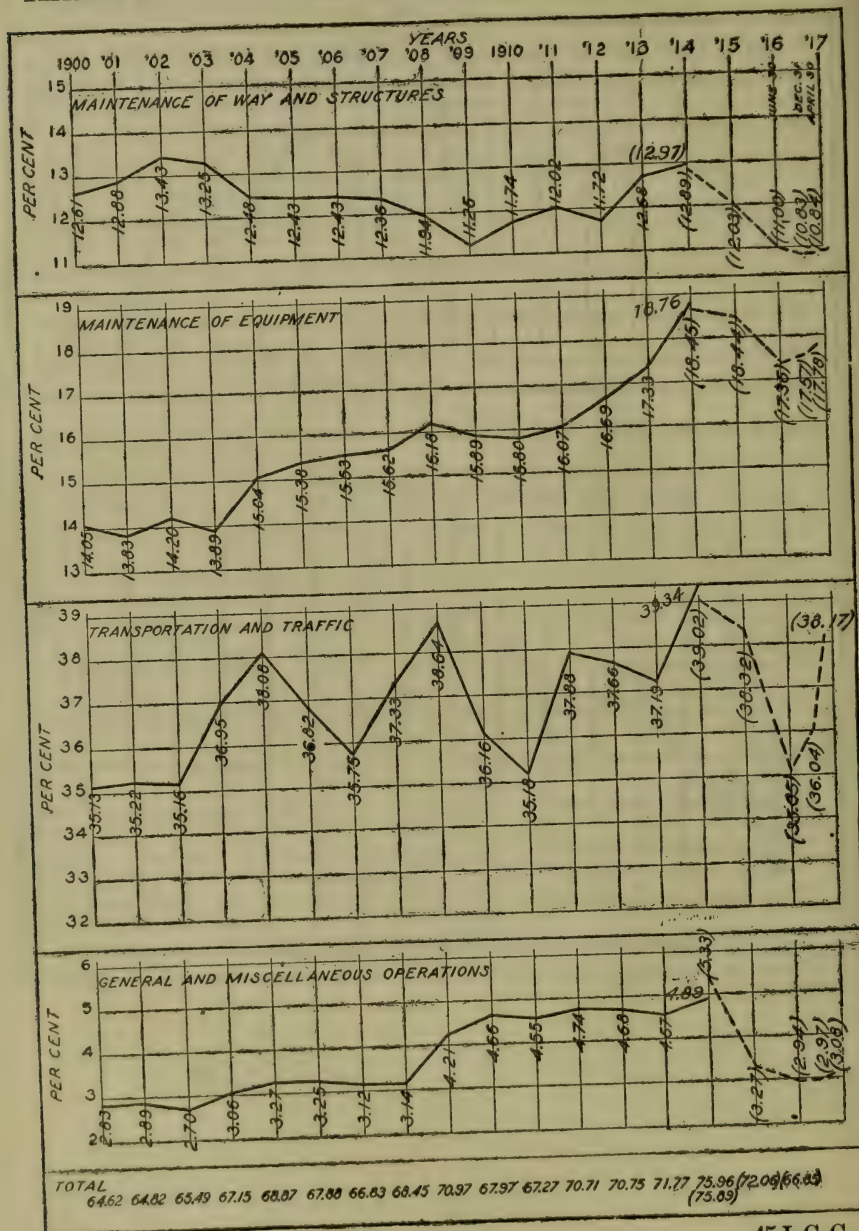


TABLE NO. 18.—Ratio of (a) maintenance of way and structures; (b) maintenance of equipment; (c) other operating expenses to operating revenues. Relative figures, the operating ratios of 1901 being taken as 100 per cent. Data from Table 6 for 41 roads.

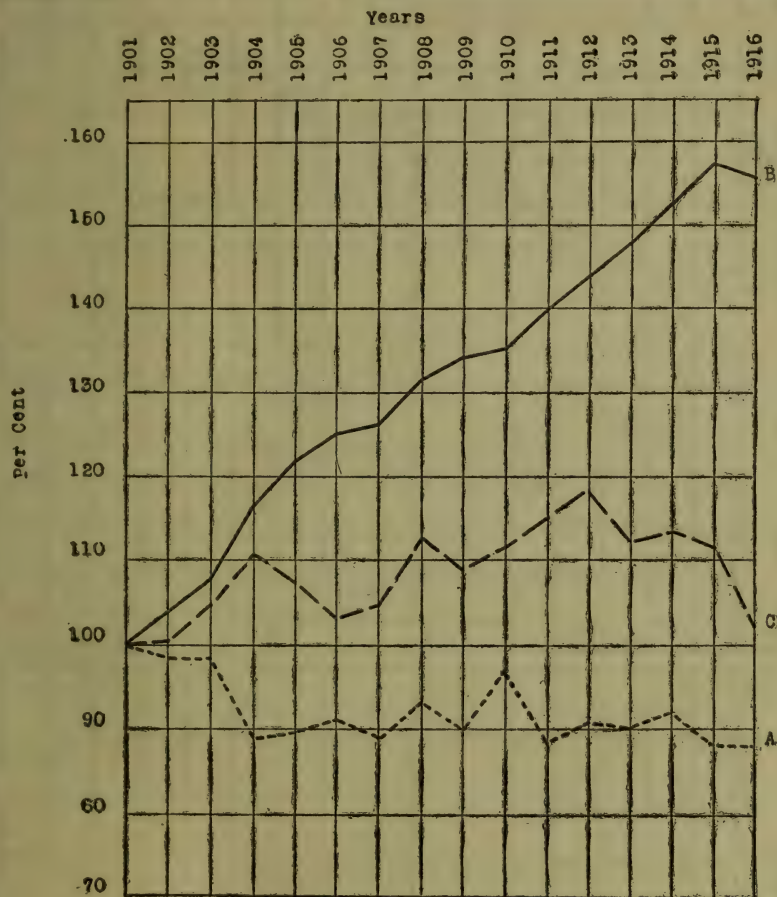


TABLE No. 19.—Passenger traffic and revenue per unit.

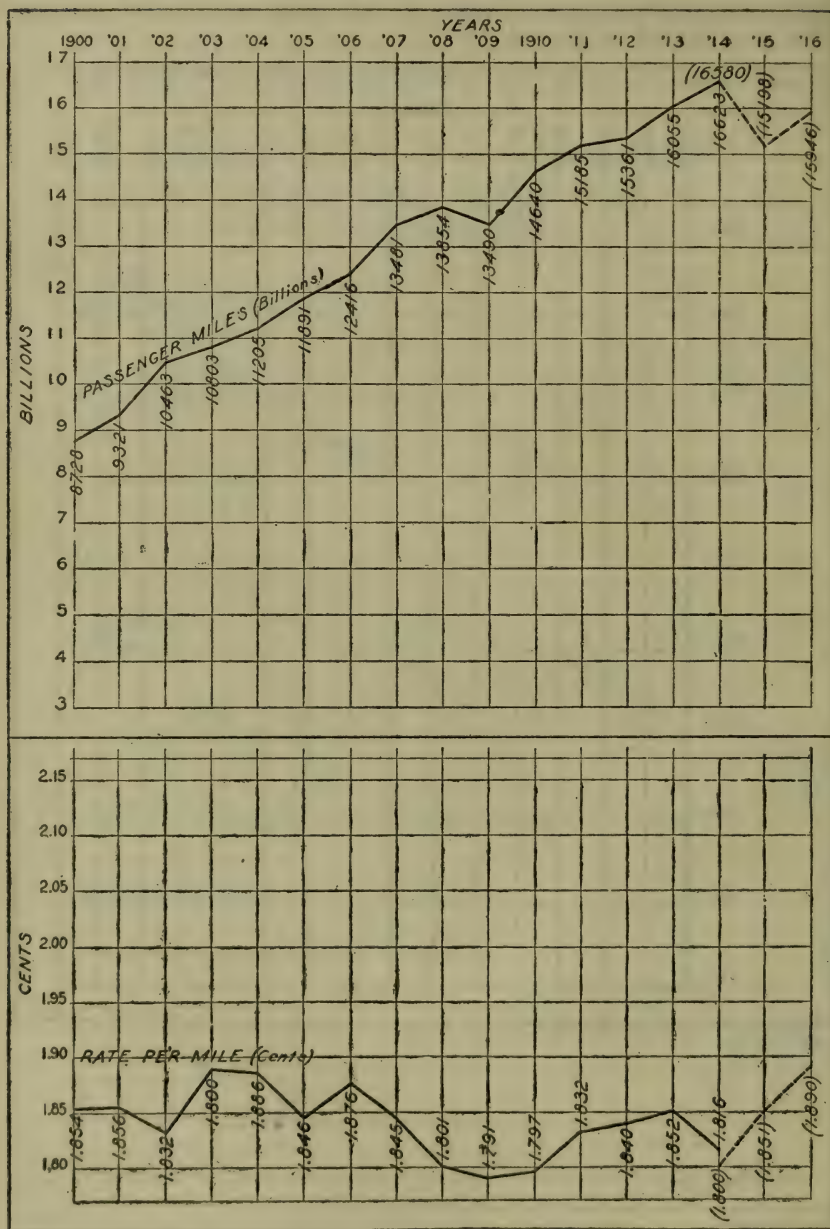


TABLE No. 20.—Ratio of taxes to operating revenues.

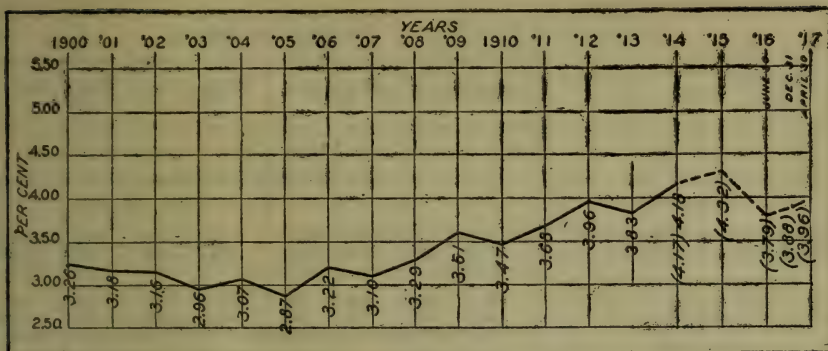


TABLE No. 21.—Ratio of taxes to property investment.

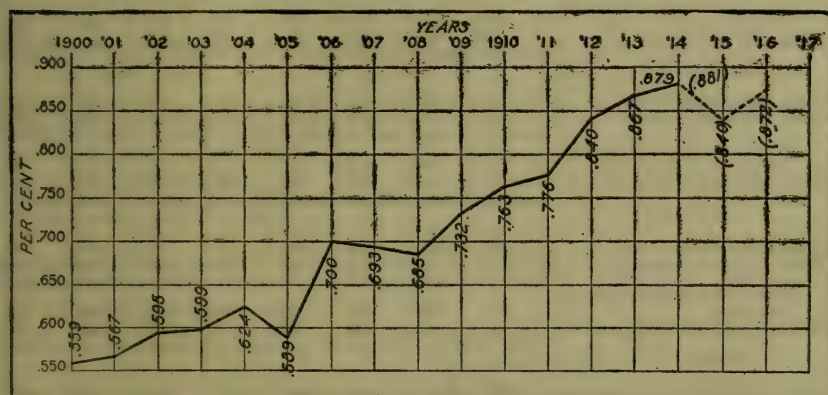


TABLE No. 22.

Month.	Per mile of road operated.							
	United States.		Eastern district.		Southern district.		Western district.	
	1916	1915	1916	1915	1916	1915	1916	1915
<i>July, 1916.</i>								
Railway operating revenues.....	\$1,315	\$1,130	\$2,380	\$2,011	\$931	\$842	\$951	\$819
Railway operating expenses.....	848	750	1,551	1,318	649	602	590	536
Net revenue from railway operations.....	467	380	829	693	282	240	361	283
Railway operating income.....	411	329	741	613	240	202	316	241
<i>August, 1916.</i>								
Railway operating revenues.....	1,418	1,190	2,504	2,120	1,028	874	1,047	866
Railway operating expenses.....	882	764	1,607	1,348	675	609	617	546
Net revenue from railway operations.....	536	426	897	772	353	265	430	320
Railway operating income.....	476	375	807	691	309	227	380	278
<i>September, 1916.</i>								
Railway operating revenues.....	1,409	1,251	2,451	2,185	1,028	925	1,057	929
Railway operating expenses.....	881	774	1,612	1,366	676	618	614	553
Net revenue from railway operations.....	528	477	839	819	352	307	443	376
Railway operating income.....	468	425	745	740	307	268	394	332
<i>October, 1916.</i>								
Railway operating revenues.....	1,466	1,323	2,482	2,296	1,116	980	1,116	988
Railway operating expenses.....	910	815	1,661	1,456	699	649	636	576
Net revenue from railway operations.....	556	508	821	840	417	331	480	413
Railway operating income.....	495	455	726	760	371	292	430	369
<i>November, 1916.</i>								
Railway operating revenues.....	1,396	1,303	2,353	2,232	1,113	981	1,050	980
Railway operating expenses.....	894	801	1,633	1,432	691	642	623	563
Net revenue from railway operations.....	502	502	720	800	422	339	427	417
Railway operating income.....	441	449	623	721	374	299	379	372
<i>December, 1916.</i>								
Railway operating revenues.....	1,345	1,253	2,257	2,175	1,129	1,012	998	909
Railway operating expenses.....	905	802	1,627	1,469	694	641	643	550
Net revenue from railway operations.....	440	451	630	706	435	371	355	359
Railway operating income.....	375	397	532	625	386	330	300	314
<i>For six months ending with December, 1916.</i>								
Railway operating revenues.....	8,348	7,450	14,415	13,013	6,345	5,615	6,219	5,491
Railway operating expenses.....	5,320	4,706	9,683	8,384	4,083	3,761	3,722	3,323
Net revenue from railway operations.....	3,028	2,744	4,732	4,629	2,262	1,854	2,497	2,168
Railway operating income.....	2,666	2,430	4,170	4,148	1,987	1,618	2,198	1,905
<i>January, 1917.</i>								
Railway operating revenues.....	1,301	1,133	2,245	2,073	1,111	956	930	759
Railway operating expenses.....	930	798	1,714	1,465	729	641	636	543
Net revenue from railway operations.....	371	335	531	608	382	315	294	216
Railway operating income.....	311	261	434	520	335	273	247	174

TABLE No. 22—Continued.

Month.	Per mile of road operated.							
	United States.		Eastern district.		Southern district.		Western district.	
	1916	1915	1916	1915	1916	1915	1916	1915
<i>February, 1917.</i>								
Railway operating revenues.....	\$1, 147	\$1, 141	\$1, 961	\$2, 041	\$1, 012	\$967	\$818	\$783
Railway operating expenses.....	809	801	1, 690	1, 465	694	640	604	548
Net revenue from railway operations.....	248	340	271	576	318	327	214	235
Railway operating income.....	188	286	176	489	269	285	167	193
<i>March, 1917.</i>								
Railway operating revenues.....	1, 373	1, 260	2, 426	2, 219	1, 145	1, 050	964	885
Railway operating expenses.....	992	844	1, 869	1, 553	762	679	664	573
Net revenue from railway operations.....	381	416	557	666	383	371	300	315
Railway operating income.....	319	361	460	578	328	328	251	272
<i>April, 1917.</i>								
Railway operating revenues.....	1, 383	1, 223	2, 424	2, 194	1, 120	983	993	856
Railway operating expenses.....	986	827	1, 813	1, 508	769	648	678	573
Net revenue from railway operations.....	397	396	611	686	351	335	315	283
Railway operating income.....	332	341	512	599	290	294	265	238
<i>For four months ending with April, 1917.</i>								
Railway operating revenues.....	5, 204	4, 753	9, 058	8, 526	4, 388	3, 956	3, 705	3, 288
Railway operating expenses.....	3, 807	3, 271	7, 088	6, 990	2, 954	2, 608	2, 583	2, 238
Net revenue from railway operations.....	1, 397	1, 487	1, 970	2, 536	1, 434	1, 348	1, 122	1, 050
Railway operating income.....	1, 150	1, 269	1, 581	2, 185	1, 222	1, 178	928	877

No. 8843.

OLIVER CHILLED PLOW WORKS ET AL.

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

Submitted October 25, 1916. Decided June 19, 1917.

Rate on interstate traffic to and from industries on the Indiana Northern Railway at South Bend, Ind., found to have been unreasonable. Reparation awarded.

Luther M. Walter and John S. Burchmore for complainants.

Ernest S. Ballard for defendants.

B. H. Dally for Vandalia Railroad Company.

E. F. Flinn for Grand Trunk Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations, with their principal places of business at South Bend, Ind. By complaint, filed May 1, 1916, they allege that defendants' rates assessed since April 1, 1914, for the transportation of interstate traffic to and from the industries of the complainants, located on the rails of the Indiana Northern Railway, were and are unreasonable and unduly prejudicial to the extent that they exceeded and exceed the rates contemporaneously applicable on similar traffic to and from industries and team tracks on the lines of defendants other than the Indiana Northern at South Bend. Reparation is asked and the establishment of reasonable and non-prejudicial rates for the future.

Some of the shipments upon which reparation is asked moved more than two years prior to the filing of the complaint. Complainants allege that the statute of limitations has been tolled by reason of the fact that they filed a petition under date of April 8, 1914, for the restoration of the joint rates formerly in effect. The complaint in question, which was embraced in Docket No. 4181, contained no prayer for reparation, and the claim herein made for reparation on shipments delivered prior to May 2, 1914, is therefore barred.

The Indiana Northern is a short railroad, 1.6 miles long, located at South Bend, and all but 5 per cent of its stock is held by stockholders of the complainant Oliver Chilled Plow Works. It connects with the Grand Trunk Western Railway, the Vandalia Railroad, and with the New York Central Railroad at two points. The Indiana

Northern was made a party to the general investigation ordered by this Commission concerning the rates, rules, and practices of the trunk lines in official classification territory in connection with small lines of railroad owned or controlled by industries, and it was found in *Indiana Northern Railway Case*, 37 I. C. C., 491, that the Indiana Northern was a common carrier with which connecting lines might join in publishing through rates, or to which they might grant allowances for interchange switching not in excess of \$1.50 per loaded car between industries or team tracks and the tracks of connecting carriers.

For a number of years prior to April 1, 1914, the connecting trunk lines applied the South Bend rates from and to industries on the Indiana Northern and absorbed a \$2 switching charge of that road, but effective on that date, following our original report in the *Industrial Railways Case*, 29 I. C. C., 212, this absorption was discontinued on interstate traffic. Similar cancellations were proposed by these same trunk lines and all other trunk line carriers in official classification territory in connection with substantially all other connecting industrial lines, but upon protest the cancellations with respect to many of the industrial lines located elsewhere in the general territory served by the trunk line defendants were suspended. The complainants did not protest because, deeming themselves similarly situated with shippers located on other industrial lines, they believed that any action taken with respect to such other lines would automatically be extended to them. The defendant trunk lines also attempted to cancel the provision for absorbing switching charges of the Indiana Northern on intrastate traffic, but the Public Service Commission of Indiana declined to allow this cancellation to become effective, so that the South Bend rates have continued to apply from Indiana Northern industries on intrastate traffic. During the period from April 1, 1914, to March 15, 1916, inclusive, the complainants were required to pay \$2 per car in addition to the South Bend rate. On that date the Indiana Northern's switching rate was reduced to \$1.50 per car, and thereafter until May 8, May 15, or May 20, 1916, depending upon the tariffs of the respective defendant trunk lines, the complainants were compelled to pay \$1.50 per car in addition to the South Bend rate. Thereafter until June 15, 1916, on traffic to the Vandalia, Grand Trunk, and Michigan Central Railroad; until June 30, on traffic to the New Jersey, Indiana & Illinois Railroad; and until July 7, on traffic to the New York Central, complainants paid, in addition to the South Bend rate, 78 cents per car, the trunk lines absorbing 72 cents of the switching charge of the Indiana Northern. Since the dates last mentioned, the defendant trunk lines have absorbed \$1.40 of the switching charge. Effective December 1,

1916, the Indiana Northern's switching charge was reduced to \$1.40 per car so that since that date the South Bend rates have applied from and to complainants' plants. From March 4 to May 20, 1916, the New Jersey, Indiana & Illinois was an exception to the above statement, that line absorbing \$1.50 of the switching charge during said period.

Complainants show that defendant trunk lines have never ceased to absorb the switching charges of connecting trunk lines at South Bend, and that their competitors located on the industry tracks or using team tracks of the defendant trunk lines at South Bend enjoyed the South Bend rates.

The cancellation on April 1, 1914, of the absorption of the Indiana Northern's switching charges had the effect of increasing the transportation charges, and therefore the burden is upon the carriers to justify the increased rates. They introduced no evidence.

We find that the rates assailed were, and for the future will be, unreasonable to the extent they exceeded and may exceed the rates contemporaneously maintained on similar traffic by the defendants other than the Indiana Northern Railway to and from industries and team tracks on their lines at South Bend; that complainants between May 2, 1914, and November 30, 1916, inclusive, made and received numerous interstate shipments of various commodities which moved over defendants' lines and upon which complainants paid and bore either the entire freight charges, or the amounts by which the charges assessed exceeded those which would have accrued at the rates to or from South Bend, except as noted below; that they have been damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found to have been and to be reasonable; and that they are entitled to reparation, with interest. The Indiana Northern should participate in the payment of this reparation to the extent to which the switching charges which it collected on these shipments exceeded \$1.50 per car.

It appears that on certain shipments of coal received by complainant Oliver Chilled Plow Works the entire freight charges were paid by the consignors. No reparation will be awarded on such shipments. The exact amount of reparation due can not be determined on the present record, and complainants should prepare statements showing the details of the shipments entitled to reparation in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified we shall consider the entry of an order awarding reparation.

An appropriate order will be entered.

HALL, *Chairman*, and HARLAN, *Commissioner*, dissent.

No. 9203.

PADUCAH BOARD OF TRADE ET AL.

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

Submitted January 15, 1917. Decided June 19, 1917.

Rate on ice in carloads from Paducah, Ky., to Martin, Tenn., not shown to have been unreasonable. Complaint dismissed.

C. W. Craig for complainants.

No appearance for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Paducah Board of Trade, a corporation organized for the purpose of promoting the interests of jobbers and commission merchants of Paducah, Ky., and the Paducah Ice Company, a corporation engaged in the ice business at Paducah. By complaint, filed September 29, 1916, they allege that the rate of 13 cents per 100 pounds charged by defendant for the transportation of four carloads of ice from Paducah to Martin, Tenn., in May and July, 1916, was unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments, aggregating 154,700 pounds, moved over defendant's line. Charges were collected in the sum of \$201.11, based on a distance commodity rate of 13 cents, minimum 24,000 pounds. On September 5, 1916, a specific commodity rate of 5.5 cents, minimum 24,000 pounds, was established over the route of movement and is still in effect. Complainant contends that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at the present rate.

Martin is a junction point of the Nashville, Chattanooga & St. Louis Railway and Illinois Central Railroad, 56 miles from Paducah over the Illinois Central and 133 miles over the Nashville, Chattanooga & St. Louis. At the time the shipments moved the Illinois Central maintained a distance commodity rate on this traffic from Paducah to Martin of 5.5 cents, minimum 30,000 pounds. This rate is still in effect and yields 19.6 mills per ton-mile and 29.5 cents per car-mile. The rate charged, based on 30,940 pounds, the average weight of the shipments in issue, yielded 19.5 mills per ton-mile and 30.2 cents per car-mile.

It was testified that with the exception of the shipments in controversy the Paducah Ice Company has forwarded no ice from Paducah to Martin except over the Illinois Central, and that these shipments were not so forwarded because the Illinois Central could not furnish the necessary equipment. Complainants submitted a comparison showing rates on ice from Paducah, Cairo, Ill., Louisville, Ky., and Evansville, Ind., to points in Indiana, Kentucky, and Tennessee, river points with one exception, ranging from $6\frac{1}{4}$ cents to 7 cents, for distances ranging from 133 miles to 202 miles, and conclude that this is sufficient to establish the unreasonableness of the rate assailed. While that rate may have been rather high, the comparisons do not demonstrate that it was unreasonable to the extent that it exceeded the present rate, or indicate what would have been the reasonable rate to have applied under all of the circumstances. It is apparent that the present rate of 5.5 cents was established by defendant to meet the rate of the short line. In reducing its rate from Paducah to Martin to 5.5 cents defendant did not change its rates to directly intermediate points, but continued rates thereto materially higher than 5.5 cents, thereby creating violations of the long-and-short-haul rule of the fourth section of the act. Such violations of that rule were not authorized by any order of the Commission.

We find that the rate charged is not shown to have been unreasonable, and an order will be entered dismissing the complaint.

45 I. C. C.

No. 9039.

LAUNDRYMEN'S NATIONAL ASSOCIATION OF AMERICA

v.

ADAMS EXPRESS COMPANY ET AL.

Submitted December 11, 1916. Decided June 21, 1917.

Classification of laundry at first class, pound rates, in the official express classification not found to be unreasonable or unjustly discriminatory. Complaint dismissed.

S. C. Bates for complainant.

T. B. Harrison, Branch P. Kerfoot, and R. C. Alston for defendants.

REPORT OF THE COMMISSIONER.

McCHORD, *Commissioner*:

The complaint in this case, filed by a voluntary association of individuals, firms, and corporations engaged in the laundry business throughout the United States, attacks the classification rating of laundry in the official express classification. Laundry is now classified first class, pound rates. This rating is alleged to be unreasonable and unjustly discriminatory to the extent that it exceeds a rating of second class, pound rates. A just and reasonable classification rating is asked.

Prior to the *General Express Investigation*, 24 I. C. C., 380, shipments by express were divided into two general classes, called "merchandise" and "general specials," the latter class embracing principally articles of food and drink. The merchandise class was subdivided into merchandise, pound rates, and merchandise, graduated charges. Merchandise, pound rates, was a lower basis than merchandise, graduated charges. Laundry and 30 other commodity descriptions were included in merchandise, pound rates.

As a result of the general investigation we decided, among other things, that two general classes should be continued; one, first class, to include merchandise, the other, second class, to comprise articles of food and drink. The subdivision of the first class into pound rates and package rates was continued. Of the 31 commodity descriptions rated merchandise, pound rates, in the old classification, 15 were placed in first-class package charges in the new classification, 11, being articles of food and drink with one exception, were transferred to second class; while the remaining 5, including laundry, were continued at first class, pound rates. In other words, no change was made in the classification of laundry.

We also found that the express companies had discriminated against small packages in favor of the heavy packages, especially for

the shorter hauls. We found, too, that there was no uniformity in rates, consequently in promulgating a new maximum scale to apply on interstate transportation by express throughout the country, an increase in some rates was made. As stated at page 434 of our report:

There being no uniformity in the rates now in use, it has become necessary to increase some rates under the tariff presented. These increases, however, affect almost exclusively rates on packages of the higher weights.

Laundry consists largely of short-haul, heavy weight shipments. As the increases which resulted from the application of the new schedule of express rates were "almost exclusively" on that kind of traffic, it so happened that laundry was one of the commodities compelled to pay higher express rates. That result of the *General Express Investigation, supra*, is the real basis of the present complaint. While no direct attack is made upon the express rates as such, it is contended that the present classification of laundry at first class, pound basis, is unjust because it results in the assessment and collection of unreasonable charges. In other words, the rates are being attacked through the classification. It is pointed out that there is a double movement of this traffic, the shipment of the soiled linen to the laundry and the return of the clean linen. There is no return movement of empty carriers, the laundry being returned in the same carriers in which it was originally shipped.

Bread is classified second class as a food product, and therefore takes rates which are 75 per cent of the first-class rates, pound basis. It is shipped in the same kind of carriers as laundry, and like laundry generally moves by express for short hauls only. The empty carrier is returned to the bakery for a nominal charge. In view of these facts complainant contends that "the laundry shipper is discriminated against in favor of the bread shipper, and the discrimination is undue, unjust, and unreasonable." As there is no competitive relation between laundry and bread, this contention can not be sustained. *Board of Trade of Chicago v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 438. The same comparison is relied upon to support the charge that the present classification of laundry is unreasonable. This evidence is not sufficient. *National Asso. of Ice Cream Mfrs. v. Adams Express Co.*, 33 I. C. C., 411. In the latter case we said, at page 414:

The *Express Investigation* was undertaken by us, for the purpose, in part, of securing uniformity throughout the country with respect to express rates and classification. The classification and rates prescribed by us have been accepted and are applied in a large majority of the states. We would not be inclined to change the classification or ratings prescribed as a result of that exhaustive investigation except upon a showing of convincing character that they are unreasonable.

Upon consideration of the whole record we find and conclude that the classification of laundry has not been shown to be unreasonable or unjustly discriminatory. The complaint will be dismissed.

No. 8835.

BOOTH FISHERIES COMPANY

v.

AMERICAN EXPRESS COMPANY ET AL.

Submitted July 25, 1916. Decided June 21, 1917.

Charges for the transportation by express of fresh fish from Selkirk, Manitoba, to Buffalo, N. Y., not shown to be unreasonable or unduly discriminatory with respect to the transportation within the Commission's jurisdiction.

R. S. Tuthill for complainant.

T. B. Harrison for American Express Company.

W. H. Burr for Dominion Express Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

Complainant, a corporation engaged in buying and selling fish, by its complaint filed April 25, 1916, alleges that the rate of \$3.50 per 100 pounds charged by defendants for the transportation of certain less-than-carload shipments of fresh fish from Selkirk, Manitoba, to Buffalo, N. Y., during the period from May 25, 1914, to August 17, 1914, was unreasonable and unduly discriminatory, in violation of sections 1, 2, and 3 of the act, to the extent that it exceeded \$2.60, a rate subsequently established for the same transportation. Reparation is asked.

The shipments in question moved over the lines of the Dominion Express Company to Hamilton, Ontario, thence over the lines of the American Express Company through Bridgeburg, Ontario, to Buffalo. It thus appears that this case falls within the principle announced in *Fairmont Creamery Co. v. Adams Express Co.*, 43 I. C. C., 724, and other cases there cited. The Commission's jurisdiction extends over that part of the transportation performed within the United States, but the facts of record do not justify a finding of unreasonableness or undue discrimination in the charges with respect to the transportation within our jurisdiction. The complaint will therefore be dismissed, and an order will be entered accordingly.

No. 8861.

N. A. WEBSTER

v.

TEXAS & PACIFIC RAILWAY COMPANY.

PORTION OF FOURTH SECTION APPLICATION No. 466.

Submitted October 6, 1916. Decided June 19, 1917.

Rate on lumber in carloads from Hosston, La., to Texarkana, Tex., not shown to have been or to be unreasonable. Complaint dismissed.

N. A. Webster for complainant.

C. Schonfelder, jr., for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the lumber business at Texarkana, Ark. By complaint, filed February 1, 1916, he alleges that the rate of $7\frac{1}{2}$ cents per 100 pounds charged by defendant for the transportation of a carload of yellow-pine lumber shipped September 18, 1915, from Hosston, La., to Texarkana, Tex., was unreasonable and in violation of the long-and-short-haul rule of the fourth section in that it exceeded 5 cents per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment consisted of 35,800 pounds of yellow-pine lumber and moved over defendant's line. Charges were collected in the sum of \$26.85, at the legally applicable rate of $7\frac{1}{2}$ cents. In support of his allegations complainant relies solely upon the fact that defendant contemporaneously maintained a carload rate of 5 cents on yellow-pine lumber from Shreveport to Texarkana, Hosston being an intermediate point on defendant's line.

The fourth section departure was covered by application No. 466, filed by F. A. Leland, agent, and portions of that application were set for hearing with this complaint. Effective August 21, 1916, the rate from Shreveport to Texarkana was increased to $7\frac{1}{2}$ cents and since that date the rates from Shreveport and Hosston to Texarkana have conformed to the requirements of the fourth section.

Defendant asserted that the 5-cent rate from Shreveport to Texarkana was unduly low and was established to meet a similar rate over a competitive line, and compared it with interstate distance rates on yellow-pine lumber for similar distances in surrounding territory.

We find that the rate assailed is not shown to have been or to be unreasonable, and an order dismissing the complaint will be entered.

No. 8513.

INTERSTATE PACKING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted April 18, 1916. Decided May 21, 1917.

Complainant attacked as unreasonable and unduly discriminatory rates on hogs and cattle in carloads from points in Wisconsin to Winona, Minn. At the hearing defendants announced their intention of reducing the rates in issue and reduced rates have since been published; *Held*, That the rates now in effect have not been shown upon this record to be unreasonable or unduly discriminatory. Complaint dismissed without prejudice to such further action as may be warranted by the pending general investigation of rates on live stock and its products.

Frank A. Larish for complainant.

J. N. Davis, O. W. Dynes, C. C. Wright, and Robert H. Widdicombe for defendants.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

Complainant is engaged in the business of meat packing at Winona, Minn., its material consisting of hogs and cattle in the proportion of about 95 per cent of the former to 5 per cent of the latter. It purchases about 25 per cent of its supplies of live stock in Wisconsin, and by complaint, filed December 11, 1915, attacks the rates on hogs and cattle in carloads from Wisconsin points to Winona, alleging that they are excessive and unreasonable in themselves and also unduly discriminatory as compared with rates charged by defendants for the transportation of like commodities for complainant's competitors from Wisconsin points to Milwaukee, Wis. Both the complainant and its competitors located at or near Milwaukee purchase live stock in the territory between Winona and Milwaukee, slaughter it at their respective plants, and sell the products in the same markets. About 75 per cent of complainant's output is marketed in Chicago and the territory east and south thereof. The defendant carriers are the Chicago, Milwaukee & St. Paul and the Chicago & North Western railway companies, hereinafter termed the St. Paul and the North Western, respectively.

Defendants announced at the hearing, held February 17 and 18, 1916, that they had decided to establish lower rates from Wisconsin

points on their respective lines to Winona, and the proposed rates were placed in evidence. They conform substantially to the Wisconsin distance scale of live-stock rates which was originally adopted voluntarily by the Wisconsin railroads and has been in general use in that state for many years in connection with shipments to points other than Milwaukee and Cudahy, Wis. Complainant contended that the proposed rates also were excessive and unduly discriminatory and requested that the rates in effect from Wisconsin points to Milwaukee be applied to shipments for like distances to Winona. The rates then proposed by defendants have since been established, effective on the North Western March 25, 1916, and on the St. Paul June 1, 1916. Except for very short distances, the rates on hogs and on cattle are the same, following the Wisconsin scale—a relation criticized by defendants' witnesses and not generally observed in live-stock tariffs. Nor is there special provision in rates for shipments in double-deck cars.

The new rates are approximately 20 per cent lower than the rates in effect at the time the complaint was filed. The question is presented, therefore, whether or not these rates are free from unreasonableness or undue discrimination.

In support of its allegations complainant filed various comparisons of the then existing rates with the rates for similar distances to Milwaukee, with rates under the distance scales effective intrastate in Wisconsin, Minnesota, Iowa, and Illinois, and with rates prescribed by this Commission in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, commonly referred to as the Texas-Oklahoma scale of live-stock rates. The statement in the following table, based largely upon complainant's exhibits, compares the former and present rates on hogs to Winona from points on the St. Paul and North Western with rates for approximately equal distances to Milwaukee and for the same distances under the various scales mentioned:

45 I. C. C.

To Winona from—	Distance.	Rate in effect at time of complaint.	Present rate.	To Milwaukee from—	Distance.	Present rate.	Wisconsin distance rate.	Minnesota distance rate.	Iowa distance rate.	Illinois distance rate.	Texas-Oklahoma scale.
C., M. & ST. P.	Miles.	Cents.	Cents.	C., M. & ST. P.	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
West Salem.....	37	11.6	9	Ixonia.....	38	9	9	9.2	8	8.4	8.5
Bangor.....	41	12.3	9.5	Watertown.....	45	9.5	9.5	9.8	8.3	8.6	9.25
Sparta.....	52	13.6	10	Richwood.....	49	9.9	10.5	10.7	9	9.4	10.25
Tunnel City.....	65	14.8	11.5	Columbus.....	64	10.8	11.5	11.2	9.7	10	11.5
Tomah.....	68	15.4	12	Fall River.....	67	10.8	12	11.4	10	10.3	12
Camp Douglas.....	81	17	13.5	Rio.....	79	11.3	13.5	12.1	10.5	11	13.5
New Lisbon.....	87	17.5	14	Wycocena.....	84	11.3	14	12.4	10.6	11.2	13.75
Mauston.....	94	18	14.5	Portage.....	92	11.8	14.5	12.6	10.8	11.4	14
Lyndon.....	105	19.2	15	Kilbourn.....	109	12.9	15.5	13	11.1	11.9	14.5
Kilbourn.....	113	19.8	16	Lyndon.....	117	13.2	16	13.6	11.4	12.2	15.25
Portage.....	130	20.4	16.5	Mauston.....	128	13.5	16.5	14.2	12	12.6	16
Wycocena.....	139	21	17	New Lisbon.....	135	14	17	14.8	12.4	12.9	16.75
Rio.....	144	21.6	17.5	Camp Douglas.....	141	14.2	17.5	14.9	12.6	13	17
Doylestown.....	149	21.6	17.5	Tomah.....	154	14.8	17.5	15.1	12.8	13.2	17.25
Fall River.....	155	22	18	Tunnel City.....	158	14.8	18	15.4	13	13.4	17.5
Columbus.....	158	22	18	Sparta.....	171	15.1	18	15.6	13.2	13.5	17.75
Watertown.....	177	22	19	Bangor.....	181	15.3	19	16.5	14	14.1	19
C. & N. W.				C. & N. W.							
Trampealeau.....	13	4.5	5.5	Calhoun.....	14	5	5.5	6	6.3	6.3	7
Galesville.....	20	6.5	6.5	Waukesha.....	20	6	6.5	6.5	6.7	6.8	7
West Salem.....	36	11.6	9	Dousman.....	33	7.4	9	9.2	8	8.4	8.5
Bangor.....	41	12.3	9.5	Sullivan.....	39	8.6	9.5	9.8	8.3	8.6	9.25
Sparta.....	51	13.6	10	Clyman Junction.....	52	10	10.5	10.7	9	9.4	10.25
Tunnel City.....	60	14.2	11.5	London.....	62	10.1	11	10.9	9.3	9.6	11
North Tomah.....	66	15.4	12	Deerfield.....	65	10.8	12	11.4	10	10.3	12
Wyeville.....	74	16	12.5	Cottage Grove.....	72	10.8	12.5	11.7	10.2	10.6	12.5
Kendalls.....	78	16.5	13	Madison.....	82	11.5	13	11.9	10.3	10.9	13.25
Elroy.....	84	17	13.5	Dalton.....	86	11.8	13.5	12.1	10.5	11	13.5
Needah.....	90	17.5	14	Waukelee.....	92	11.8	14	12.4	10.6	11.2	13.75
Woneewoc.....	91	18	14.5	Buffalo.....	102	14	14.5	12.6	10.8	11.4	14
Reedsburg.....	106	19.2	15.5	Merrimac.....	108	13.2	15.5	13.2	11.3	12.1	15
Saraboo.....	122	20.4	16.5	Friendship.....	125	14	16.5	14	11.8	12.6	15.75
South Beaver Dam..	165	22.8	18.5	McCoy.....	170	15.1	18.5	15.9	13.6	13.8	18

It will be seen that the present rates to Winona conform to the Wisconsin distance scale except in a few instances in which defendants equalize their rates from common points; and that they are substantially higher than either the rates to Milwaukee or any of the state scales other than that of Wisconsin. They also average slightly higher than the Texas-Oklahoma scale. The Milwaukee rates, on the other hand, occupy middle ground between the Wisconsin and Minnesota scales, which are higher, and the Iowa and Illinois scales, which are lower. Complainant places great reliance on the comparison with the Texas-Oklahoma scale, and submits a comprehensive comparison of transportation and traffic conditions in the southwest, where that scale is in effect, and in western trunk line territory, using statistics published by this Commission based upon annual reports of the carriers for the year ended June 30, 1914. These exhibits indicate that operating conditions, as reflected by traffic density, especially of live stock, car and train loading, and operating expenses per train-mile, are substantially better in the territory traversed by the defendants' lines than in southwestern territory. Complainant

therefore argues that defendants should establish a lower scale of live-stock rates than is used in the southwest. We do not think it necessary to set forth these comparisons in detail, for the reason that they comprehend great territories as a whole, while the question now before us concerns only a relatively small area immediately adjacent to Winona. It is apparent, as defendants point out, that the movement of live stock westward to Winona, coupled with the movement of products from Winona eastward, is an uneconomical transportation situation which necessarily places complainant at a disadvantage as compared with competitors who are under no necessity of back hauling their freight. Nevertheless complainant is fairly entitled to all the benefits of reasonable and nondiscriminatory rates.

Defendants assert that in applying the Wisconsin distance basis to Winona they are doing more than could reasonably be expected of them, pointing out the fact that the haul to Winona from Wisconsin on either defendant's line necessitates the use of a bridge over the Mississippi River. They cite our decisions in which we have given weight to similar factors. *Railroad Commission of Iowa v. I. C. R. R. Co.*, 20 I. C. C., 181; *Edwards & Bradford Lumber Co. v. C., B. & Q. Ry. Co.*, 25 I. C. C., 93; *East Dubuque Supply Co. v. I. C. R. R. Co.*, 28 I. C. C., 425. In the first of these cases, which concerned rates over the Mississippi River bridge at Dubuque, Iowa, we said that "by reason of the great cost of such structures a bridge has been regarded more or less generally as adding a constructive mileage to the carrier's line, for which an additional charge may be exacted."

Defendants also assert that the rates to Milwaukee from Wisconsin points, as well as the various state scales other than that of Wisconsin, are unreasonably low. The rates to Milwaukee were prescribed by the Wisconsin Railroad Commission in 1907 after an investigation based upon a specific complaint against the rates from Mondovi, Wis., to Milwaukee, but which was extended to cover Wisconsin intrastate live-stock rates generally. Defendants point to the fact that the order of the Wisconsin commission affected only the rates to Milwaukee and Cudahy, and in this fact find evidence that other Wisconsin intrastate rates were considered reasonable. Upon referring to the report of the Wisconsin commission, however, we fail to find this view supported. *In re Rates on Live Stock*, 1 Wis. R. R. Com. Rep., 778.

Aside from any question as to the reasonableness of the present rates to Milwaukee, defendants urge that those rates should not be used as the measure of rates to Winona for the reason that the movement of live stock to Milwaukee is in the direction of the gen-

eral movement not only of live stock but of other traffic, and that the cost of transportation in that direction is correspondingly lower than in the opposite direction; also that the lower traffic density in the vicinity of Winona, coupled with the investment cost and other expense of the Mississippi River bridges, favors higher rates to Winona than to Milwaukee. Figures are submitted showing that during 1915 only 83 carloads of live stock were shipped from stations on the St. Paul to Winona as against 12,940 carloads to Milwaukee. Complainant replies that this merely tends to establish the alleged discrimination. However, it is testified that points heretofore having lower rates to Winona than to Milwaukee have nevertheless preferred Milwaukee in their shipments. Complainant further points to the advantage which would accrue to defendants in securing return lading for empty stock equipment moving westward, and to the terminal expenses at Milwaukee which it alleges may fairly be regarded as an offset to the terminal expenses at Winona, including the aforesaid bridge expenses. It appears that many of the shipments credited to Milwaukee are in fact destined to Cudahy, a local point on the North Western, 7 miles south of Milwaukee, which takes the Milwaukee rates. Shipments over the St. Paul destined to Cudahy are delivered to the North Western at Milwaukee, the St. Paul absorbing the North Western's switching charge of \$3 per car, where the net revenue amounts to \$15 or more per car. By reference to the rates it would appear that this absorption must apply to practically all shipments.

The order of the Wisconsin commission established the same rate to Cudahy as to Milwaukee but no discussion of this feature appears in its report. It can not be assumed, however, that the additional distance of 7 miles would necessarily justify rates higher than for deliveries in Milwaukee, as similar switching distances are not unusual. A witness for the St. Paul, for example, testified that switching between two yards of that defendant in Milwaukee requires a one-way car movement of 18 miles. In *Switching Charges at Milwaukee, Wis.*, 32 I. C. C., 509, we approved a switching charge of 1 cent per 100 pounds, minimum 60,000 pounds, for reciprocal switching in Milwaukee.

The record does not enable us to weigh correctly these various factors relied upon by the parties. As already stated, rates now in effect from Wisconsin points to Winona are the same as are applied from Wisconsin points to interior Wisconsin cities, some of which have packing industries. Defendants also show that these rates are substantially in line with interstate rates in effect between points in Iowa and points in Minnesota, and are lower than the rates now in effect on the Chicago, St. Paul, Minneapolis & Omaha Railway and the

Minneapolis, St. Paul & Sault Ste. Marie Railway from Wisconsin points to St. Paul. From the fact that complainant's disadvantage as compared with its Milwaukee competitors increases with the distance of originating points from Winona, we feel safe in assuming that complainant is mainly interested in the shipments from the nearest Wisconsin points, and by reference to the comparative table it will be seen that for distances of 50 miles or less the Winona rates in most cases differ but slightly from the Milwaukee rates.

By orders dated November 9, 1915, and March 8, 1916, we have entered upon a general investigation of the rates, rules, regulations, and practices of carriers in western, official, and southern classification territories governing the transportation of live stock, fresh meats, packing-house products, etc. As the rates in issue in this proceeding have not been shown upon this record to be unreasonable or unduly discriminatory, the complaint will be dismissed, but without prejudice to such further action as may be warranted by our general investigation. An order will be entered accordingly.

45 I. C. C.

MILK AND CREAM RATES TO PHILADELPHIA, PA.

No. 8558.¹

MILK AND CREAM INVESTIGATION.

Submitted October 23, 1916. Decided June 21, 1917.

Rates for the interstate transportation of milk, cream, condensed milk, skimmed milk, buttermilk, and pot cheese in carloads and less than carloads to Philadelphia, Pa., Atlantic City and Cape May, N. J., and points on the New Jersey seacoast located between the two latter points from points on the lines of the Pennsylvania Railroad Company, Philadelphia, Baltimore & Washington Railroad Company, and West Jersey & Seashore Railroad Company, and to Philadelphia, Pa., from points in New Jersey on the line of the Philadelphia & Reading Railway Company and from points on the line of the Baltimore & Ohio Railroad Company found to be unreasonable and unduly prejudicial to producers and shippers of the articles named from near-by points and unduly preferential to producers and shippers of said articles from distant points. Reasonable maximum and non-prejudicial rates prescribed for the future.

Robert D. Jenks and Duane, Morris & Heckscher for Philadelphia Milk Exchange.

N. B. Kelly for Philadelphia Chamber of Commerce.

Allen S. Olmsted, 2d., for New York Sanitary Milk Dealers' Association.

M. S. Hartman for Fairmont Creamery Company of New Jersey.

Henry Wolf Bickel for Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and West Jersey & Seashore Railroad Company.

Charles R. Webber, Morison R. Waite, Edward Barton, and William A. Eggers for Baltimore & Ohio Railroad Company.

W. L. Kinter for Philadelphia & Reading Railway Company and Atlantic City Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

By complaint filed March 3, 1915, by the Philadelphia Milk Exchange, representing about 60 milk dealers in the city of Philadelphia, Pa., it is alleged that rates on milk, cream, condensed milk, skim milk, buttermilk, and pot cheese in carloads and less than carloads from points on the lines of the Philadelphia, Baltimore & Washington Railroad Company, the Pennsylvania Railroad Company, and West Jersey & Seashore Railroad Company, hereinafter collectively called

¹ The proceeding also embraces complaints in No. 7826, *Philadelphia Milk Exchange v. Philadelphia, Baltimore & Washington Railroad Company et al.*; and in No. 8785, *Same v. Philadelphia & Reading Railway Company et al.*

the Pennsylvania, to Philadelphia and points within 30 miles thereof, and to Cape May and Atlantic City, N. J., and points intermediate to Cape May on the New Jersey seacoast, are unreasonable and unjustly discriminatory. Certain rules and practices of these respondents governing the transportation of the articles named were also alleged to be unreasonable. Hearing was had and the case was submitted on November 4, 1915. On January 11, 1916, the Commission instituted a general investigation with respect to interstate rates on milk and cream, and the rules, regulations, and practices applicable thereto. The complaint referred to was consolidated with the general investigation. On April 7, 1916, the Philadelphia Milk Exchange, hereinafter called Philadelphia dealers, filed a complaint against rates on milk and cream and similar articles, and the rules, regulations, and practices governing their transportation to Philadelphia and other points, maintained by the Philadelphia & Reading Railway Company and Atlantic City Railroad Company, hereinafter called the Reading, and the Baltimore & Ohio Railroad Company. The allegations are similar to those in the complaint against the Pennsylvania. This complaint was also consolidated with the general investigation.

The Pennsylvania maintains the same basis of rates intrastate and interstate on its lines east of Pittsburgh and Erie, Pa., except as to intrastate rates to Buffalo, N. Y. Philadelphia dealers have also filed complaints attacking the reasonableness of intrastate rates to Philadelphia and other points with the state railroad commission. Except where otherwise stated, the word "milk" will include skim milk, buttermilk, and pot cheese, and the word "cream" will include condensed milk.

The transportation of milk and cream to Philadelphia has developed from an adjunct of the passenger business. Originally milk and cream were transported in baggage cars in passenger trains. Such attention as they required was given by baggagemen, and the rates were made by the passenger department. The traffic was treated as only incidental to the general transportation business and received but little attention either in respect to the service rendered or rates charged for the service. The increase in the production and consumption and the adoption by municipalities of regulations with respect to the sale of milk made it necessary to use cars solely for the transportation of milk and cream. On the Pennsylvania the movement of milk in milk cars in passenger trains has been succeeded by a movement in milk trains, excepting cars brought from branch-line points in passenger trains and later consolidated into milk trains, and occasional movements to Philadelphia in passenger trains. The volume of the latter traffic on the Pennsylvania is small. Transportation of milk and cream from points on the West Jersey & Seashore Railroad is largely in baggage cars in passenger trains.

The milk and cream supply of Philadelphia is procured in the states of New Jersey, New York, Delaware, Maryland, and Pennsylvania, a large part being produced at points within 100 miles of the city and moving over intrastate routes. The consumption of milk in Philadelphia has increased steadily, with marked increases in recent years.

The following table, compiled from carriers' records by Philadelphia dealers, shows the receipts of milk and cream in quarts from all points during certain illustrative periods:

Year.	Receipts.	Year.	Receipts.
1887.....	78, 178, 712	1905.....	120, 400, 970
1890.....	89, 257, 884	1910.....	150, 638, 818
1895.....	96, 219, 884	1915.....	178, 428, 898
1900.....	102, 556, 308		

During 1915 the amount of milk and cream transported to Philadelphia by the Pennsylvania was 93,675,462 quarts, by the Philadelphia & Reading, 53,938,435 quarts; and by the Baltimore & Ohio, 11,907,916 quarts. During that year electric lines transported 7,115,605 quarts; express companies, 6,991,480 quarts; and wagons and trucks, 4,800,000 quarts.

Milk and cream are sold to Philadelphia dealers on two bases. Under one basis the farmers sell the milk at a price delivered in Philadelphia. The farmers own the cans, clean them, tender the loaded cans at a milk platform owned by the carrier, and pay the transportation charges. The farmers do not own or operate milk-receiving stations. The farmers ship two-thirds of the milk and cream shipments over the Philadelphia & Reading, one-sixth of those over the Baltimore & Ohio, and some of those over the Pennsylvania. Until recent years substantially all shipments to Philadelphia were forwarded by farmers. Under the other basis Philadelphia dealers establish receiving stations at various points and install machinery for cooling the products and cleaning the cans. At a few points receiving stations are operated by independent companies which ship to dealers, the latter paying the transportation charges.

The Pennsylvania and Baltimore & Ohio have milk departments in charge of the milk business. Employees of these departments accompany cars to receive shipments, distribute the empty cans, and attend to billing and checking. The Reading has no separate milk department. Several years ago the Reading made a contract with the Reading Dairy Company whereby the latter constructed receiving and icing stations at points on the Gettysburg & Harrisburg and Philadelphia, Harrisburg & Pittsburgh divisions and attempted to induce farmers to deliver milk to the Reading. These stations were leased or sold to Philadelphia dealers. The Reading paid to the dairy company 20 per cent of its gross receipts on ship-

ments secured by that company. The contract expired last year, and has not been renewed. Shipments secured by the Reading under this contract moved to Philadelphia over intrastate routes.

Shipments to Philadelphia are made largely in 40-quart cans, although 46-quart cans are also used, and occasionally shipments are made in other sized containers.

The price of milk delivered to the general public in Philadelphia at the date of the hearings was 8 cents a quart. This price had been steadily maintained since 1901. Milk must contain 3.35 per cent of butter fat, and under the rules of the Philadelphia board of health must be pasteurized. About 20 per cent of the milk received in Philadelphia is sold at wholesale from 5 to 6 cents a quart. About 5 per cent of the total shipments is cream.

Prices paid producers for milk range from \$1.45 to \$2 per 100 pounds, with premium payments when the butter fat content is above 4 per cent, and deductions when the butter fat is below 3.80 per cent. There are between 300 and 400 milk dealers in Philadelphia. Small dealers deliver about 55 per cent of the milk sold at retail, and the balance is delivered by large dealers who own receiving stations at points of origin.

Milk and cream are delivered at Philadelphia by the Pennsylvania, the Reading, and the Baltimore & Ohio. The Pennsylvania publishes rates based on a zone system. The following table shows the zones and rates in cents per can on milk in carloads and less than carloads, and cream in less than carloads, now published by the Pennsylvania. The less-than-carload rates include icing, and all rates include the return of the empty containers:

MILK.

	First zone, 1 to 30 miles.		Second zone, 31 to 65 miles.		Third zone, 66 to 100 miles.		Fourth zone, 101 to 190 miles.		Fifth zone, 191 to 500 miles.		Sixth zone, 501 miles or more.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
CANS.												
<i>Quarts.</i>												
20.....	10	8.7	11.5	10	13.7	11.9	15.2	13.2	16.8	14.6	18.4	16
23.....	11.5	10	13.3	11.5	15.8	13.7	17.5	15.2	19.3	16.8	21.2	18.4
24.....	12	10.4	13.8	12	16.4	14.3	18.3	15.9	20.2	17.5	22.1	19.2
30.....	15	13	17.3	15	20.5	17.9	22.9	19.9	25.2	22	27.6	23.9
40.....	20	17.4	23	20	27.3	23.7	30.5	26.5	33.6	29.2	36.8	31.9
46.....	23	20	26.5	23	31.4	27.3	35.1	30.5	38.6	33.6	42.3	36.8
CASES.												
<i>Quarts.</i>												
12.....	8.4	7.3	9.7	8.4	11.4	10	12.8	11.1	14.1	12.3	15.4	13.4
15.....	10.5	9.1	12.1	10.5	14.4	12.5	16	13.9	17.6	15.3	19.3	16.8
20.....	14	12.2	16.1	14	19.1	16.6	21.3	18.6	23.5	20.5	25.7	22.4
<i>Pints.</i>												
20.....	8	7	9.2	8	10.9	9.5	12.2	10.5	13.4	11.7	14.7	12.8
24.....	9.6	8.4	11	9.6	13	11.3	14.7	12.8	16.2	14.1	17.6	15.3

CREAM.

	First zone, 1 to 30 miles, L. C. L.	Second zone, 31 to 65 miles, L. C. L.	Third zone, 66 to 100 miles, L. C. L.	Fourth zone, 101 to 190 miles, L. C. L.	Fifth zone, 191 to 500 miles, L. C. L.	Sixth zone, 501 miles or more, L. C. L.
CANS.						
Quarts.						
20.....	17.5	20.5	23.1	24.7	26.3	27.8
23.....	20.2	23.6	26.6	28.5	30.2	32
40.....	35	41	46.2	49.4	52.5	55.7
46.....	40.3	47.2	53.1	56.8	60.4	64
CASES.						
Quarts.						
12.....	14.7	17.2	19.4	20.7	22.1	23.4
15.....	18.4	21.5	24.3	25.9	27.6	29.2
20.....	24.5	28.7	32.3	34.5	36.8	39
Pints.						
20.....	14	16.4	18.5	19.7	21	22.3
24.....	16.8	19.7	22.2	23.7	25.2	26.7
Half pints.						
40.....	15.8	18.5	20.8	22.3	23.6	25.1
48.....	18.9	22.1	25	26.7	28.4	30
Quarter pints.						
96.....	21	24.6	27.7	27.7	29.6	33.4

Carload shipments are iced by dealers. No carload rates on cream are published by the Pennsylvania. From points in the first zone the less-than-carload rate on cream is 15 cents per 40-quart can higher than that on a 40-quart can of milk, and in the other zones about 18 cents higher. The following table shows the distances from some of the principal interstate points on the lines of the Pennsylvania to Philadelphia, and the rates in cents per 40-quart can:

Shipping point.	Distance (miles).	Milk.		Cream, L. C. L.
		C. L.	L. C. L.	
Salem, N. J.....	37	20	23	41
Daretown, N. J.....	30	20	23	41
Frenchtown, N. J.....	61	20	23	41
Columbus, N. J.....	56	20	23	41
Stockton, N. J.....	49	20	23	41
Price, Md.....	82	23.7	27.3	46.2
Massey, Md.....	74	23.7	27.3	46.2
Kennedyville, Md.....	79	23.7	27.3	46.2
Mount Pleasant, Del.....	51	20	23	41
Mayville, N. Y.....	450	29.2	33.6	52.5
Summerdale, N. Y.....	444	29.2	33.6	52.5

Philadelphia dealers ship milk over the Pennsylvania from points in New York state to New York City and to Atlantic City and other New Jersey seacoast points at the fourth zone rates, the distances being about 500 miles.

The rates of the Reading are published on a different basis, the rates from each station being specifically stated. The rates on cream are double the rates on milk. The Reading transports a compara-

tively small portion of its shipments of milk and cream in interstate commerce. The following table shows representative less-than-carload rates on milk from points on the Reading to Philadelphia, which include ice and the return of the empty containers, together with the distances:

Shipping point.	Dis- tance.	Rate per 40-quart can.	Shipping point.	Dis- tance.	Rate per 40-quart can.
	<i>Miles.</i>	<i>Cents.</i>		<i>Miles.</i>	<i>Cents.</i>
Belle Mead, N. J.....	58	24	Chester Springs, Pa.....	45	24
Hopewell, N. J.....	50	24	Gettysburg, Pa.....	172	32
Pennington, N. J.....	45	24	Hatfield.....	33	24
Ackworth, Pa.....	49	18	Hummelstown, Pa.....	118	30
Annaville, Pa.....	106	30	Newtown, Pa.....	32	18
Anselma, Pa.....	46	24	Palm, Pa.....	60	24
Barto, Pa.....	63	24	Royersford, Pa.....	41	24
Biglerville, Pa.....	164	32	Rushland, Pa.....	34	24
Boiling Springs, Pa.....	142	32	Telford, Pa.....	37	24
Buckingham, Pa.....	39	24	Zieglersville, Pa.....	46	24
Chalfont, Pa.....	37	24			

The Baltimore & Ohio publishes a mileage scale of rates applicable to interstate transportation of the commodities involved between substantially all points on its lines, except the Philadelphia division. This division extends from Bay View, Md., to Park Junction in the city of Philadelphia, a distance of about 90 miles, and includes the Landenberg branch and Lancaster, Cecil & Southern Railroad. Practically all shipments of milk and cream to Philadelphia by the Baltimore & Ohio originate on this division. The distances from the points from which shipments are made vary from 18 miles to 56 miles. All shipments are made in less-than-carload lots. Shipments are also received from the Reading at Elsmere Junction, Del., and move to Philadelphia under joint rates.

The following table shows rates in cents from points on the Philadelphia division to Philadelphia which include the return of empty containers and ice on less than carloads:

	Milk.		Cream.	
	L. C. L.	C. L.	L. C. L.	C. L.
Cans:				
20 quarts.....	14	13	18	16
23 quarts.....	16	14	20	18
32 quarts.....	18	16	23	21
40 quarts.....	20	18	35	32
46 quarts.....	23	21	40	36

SHIPMENTS IN BOTTLES.

Cases or crates:				
1 to 25 miles.....	11	10	14	13
26 to 30 miles.....	12	11	14	13
31 to 35 miles.....	12	11	16	14
36 to 40 miles.....	13	12	16	14
41 to 45 miles.....	14	13	17	15
46 to 50 miles.....	14	13	18	16
51 to 55 miles.....	14	13	18	16
56 to 60 miles.....	15	14	19	17

About 80 per cent of the interstate shipments of milk and cream over the Pennsylvania are transported in milk trains. The Baltimore & Ohio and the Reading have no milk trains to Philadelphia, and shipments are transported in milk cars attached to passenger trains, except some shipments for short distances and in small volume are forwarded over the Reading in freight trains.

The cars assigned to the milk business by the Pennsylvania represent an investment of over \$500,000. They include 94 refrigerator cars, costing approximately \$1,595 each; 27 baggage cars, specially fitted for milk service, costing \$3,255 each; and thirty-six 60-foot steel refrigerator cars, costing \$7,665 each. The Reading has 56 cars assigned to its milk service. Of this number, 31 are refrigerator cars, which cost from \$1,120 to \$1,786 each, and the remainder are transformed baggage cars, costing from \$5,274 to \$6,914 each. The cars owned by the Baltimore & Ohio are converted dairy refrigerator cars, specially constructed for the milk business. Eight are used in handling the Philadelphia traffic.

The following table shows the rates in cents per 40-quart can on milk in less than carloads for the distances shown, from points on the various divisions of the Pennsylvania, in effect on the dates set forth:

	20 miles.	25-30 miles.	35-45 miles.	50-60 miles.	65 miles.	70-80 miles.	85-90 miles.	95 miles.	100 miles.
Main line or Philadelphia division—Philadelphia- Harrisburg:									
May 1, 1907.....	13	13	13	13	20.9	20.9	20.9	25.2	25.2
July 1, 1907.....	15	15	15	15	24	24	24	29	29
April 1, 1911.....	17.25	17.25	17.25	17.25	27.6	27.6	27.6	33.35	33.35
May 30, 1912.....	20	20	23	23	23	26	26	26	26
January 23, 1915.....	20	20	23	23	23	27.3	27.3	27.3	37.3
Philadelphia, Baltimore & Washington R. R.:									
1907.....	13	13	17.4	17.4	21.74	21.74	21.74	.....	.....
August 24, 1907.....	15	15	20	20	25	25	25	.....	.....
April 1, 1911.....	17.25	17.25	23	23	28.75	28.75	28.75	.....	.....
May 30, 1912.....	20	20	23	23	23	26	26	26	26
January 23, 1915.....	20	20	23	23	23	27.3	27.3	27.3	27.3
West Jersey & Seashore lines:									
1907.....	17.4	17.4	17.4	.....	.....	.....	.....	.....	.....
September 20, 1910.....	20	20	20	20	25	25	25	.....	.....
April 1, 1911.....	23	23	23	23	28.75	28.75	28.75	.....	.....
May 30, 1912.....	20	20	23	23	23	26	26	26	26
January 23, 1915.....	20	20	23	23	23	27.3	27	27	27
Belvidere branch—Trenton, N. J.—Manunka Chunk, N. J.:									
May 1, 1907.....	13	17.4	17.4	19.57	21.74	21.74	21.74	.....	.....
July 1, 1907.....	15	20	20	22.5	25	25	25	.....	.....
May 1, 1909.....	15	20	20	22.5	22.5	25	25	.....	.....
April 1, 1911.....	17.3	23	23	25.9	25.9	28.8	28.8	.....	.....
May 30, 1912.....	20	20	23	23	23	26	26	26	26
January 23, 1915.....	20	20	23	23	23	27.3	27.3	27.3	27.3

For a long period prior to July 1, 1907, substantially all milk and cream was transported to Philadelphia in cans containing 40 quarts, dry measure. On April 15, 1907, the Pennsylvania legislature passed an act which made it unlawful for any person to sell milk and cream

on and after July 1, 1907, according to any other standard than that known as liquid measure. A 40-quart can, dry measure, will hold 46 quarts, liquid measure, and the Philadelphia dealers assert that the increase in rates shown in the above table for the year 1907 resulted from the application by the Pennsylvania of liquid measure to milk and cream that had been previously shipped and paid for at dry measure. The Pennsylvania contends that its tariffs provided rates for 40 quarts of milk, without specifying the measure; that the shipment of 46 quarts, liquid measure, in 40-quart cans, dry measure, was in violation of its tariffs; and that, therefore, there was no increase of rates in 1907. Philadelphia dealers show that although there was no change in the size of the cans, they were required to pay about 15 per cent more for the transportation of a can of milk of the same size after the Pennsylvania had reformed its tariffs. A similar change was made by the Reading in 1907.

In 1910 the Philadelphia board of health took active measures to insure that milk and cream transported to Philadelphia should be delivered at a temperature not exceeding 60° F. Prior to 1911 milk and cream had been shipped to Philadelphia from all points without ice. In the spring of 1911 the carriers initiated the practice of icing less-than-carload shipments. To cover the cost of the icing the Pennsylvania increased its rates about 15 per cent, the Reading about 20 per cent, and the Baltimore & Ohio about 25 per cent. Each of the carriers submitted exhibits to show that the increases in rates covered only the added cost of icing, not considering labor, transportation of the ice, diminution of car space for bunkers, etc. Exhibits were filed by the Philadelphia dealers with a view to showing that the cost of icing when done by them was much less than the cost shown by carriers' exhibits. It is shown by the respondents that shippers ice carload shipments only, and thus obtain maximum refrigeration from the ice used; also that costs are much less on carloads than on less than carloads.

In 1911 the Pennsylvania established a milk department. At that time the rates on milk to Philadelphia were not on a uniform basis. In 1912 the Pennsylvania readjusted its rates and established zones substantially on the same basis maintained by carriers serving the city of New York. In establishing the limits of the zones the first one was made from 1 to 30 miles instead of from 1 to 40 miles as to New York; the second zone was made 31 to 65 miles instead of 41 to 100; and the third zone was made 66 to 100 miles. The minimum rate to Philadelphia was made 20 cents per 40-quart can, 3 cents less than to New York. The readjustment in 1912 involved decreases as well as increases.

The rates established in 1912 by the Pennsylvania and the zone adjustment then adopted were substantially on the basis approved

in *Milk Producers' Protective Asso. v. D., L. & W. R. R. Co.*, 7 I. C. C., 92, with respect to shipments of milk and cream to New York City, and it is contended that the circumstances and conditions of transportation to New York and Philadelphia are substantially the same. It is pointed out that modifications of the zones and rate adjustments were made for short hauls, and that, where rates are not the same as to New York, they are on a lower basis. The rates, in cents per 40-quart can, of the Pennsylvania to Philadelphia, as they were before the advance in 1915, compared with rates then in effect to New York, are shown by the following table:

To New York:		To Philadelphia:	
1 to 40 miles.....	23	1 to 30 miles.....	20
41 to 100 miles.....	26	31 to 65 miles.....	23
101 to 190 miles.....	29	66 to 100 miles.....	26
191 to 500 miles.....	32	101 to 190 miles.....	29
		191 to 500 miles.....	32

In 1915 rates on milk and cream were increased 5 per cent by the Pennsylvania, excepting rates from the first and second zones. Rates from these zones could not, as a practical matter, be increased because of truck and wagon competition. Similar increases were not made in 1915 by the Baltimore & Ohio or the Reading.

It is contended by Philadelphia dealers that inasmuch as rates on milk and cream have been increased since January 1, 1910, the burden of proof is on the respondents to show that the increased rates are just and reasonable and that the evidence submitted by them fails to sustain that burden. In the general investigation undertaken by the Commission under statutory authority, not only are the rates to Philadelphia and other points against which specific complaints are made involved, but rates to all points on respondents' lines. The entire fabric of milk and cream rates applicable to interstate traffic and the zone and other rate adjustments by all carriers subject to the act are here under review. A determination of lawful and reasonable rates and regulations to be required for the future is to be reached from a consideration of all pertinent facts in the whole record. All the facts appearing of record, including the increased rates referred to, and the burden of proof, have had full consideration.

The chief statistician of the Pennsylvania made a study of operating expenses of the milk business for the year 1914 of the system east of Pittsburgh as a whole and of the Philadelphia division, extending from Philadelphia to Harrisburg, including branch lines. He stated that the Philadelphia division was used for special study because the greater volume of milk and cream traffic forwarded to Philadelphia is over that division; that it lies wholly within the state; that the study can be used in the case before the state commission; and that changes in rates have been more marked on the

Philadelphia division than on other divisions of the system. It is contended that if rates and charges on the Philadelphia division are justified, the rates and charges on other divisions of the system are also justified.

The witness submitted two exhibits showing the figures upon which his conclusions were based. The following table gives figures respecting the operating expense to the Pennsylvania of the milk and cream business on the Philadelphia division for the year ended December 31, 1914:

	Entire passenger-train expenses.	Entire freight-train expenses.	Appor- tioned to milk service.
Maintenance of way and structures:			
Superintendence.....	\$69,607.83		¹ \$2,308.20
Ballast.....	31,895.95		¹ 1,057.67
Ties.....	190,513.44		¹ 6,317.43
Rails.....	114,591.49		¹ 3,799.85
Other track material.....	118,611.56		¹ 3,932.16
Track laying and surfacing.....	284,693.33		¹ 9,440.43
Roadway maintenance and paving.....	131,336.03		¹ 4,355.10
Removing snow, ice, and sand.....	46,883.17		¹ 1,554.65
Subways and tunnels.....	122.44		¹ 4.06
Bridges, trestles, and culverts.....	116,288.87		¹ 3,856.14
Right of way fences, crossings, and signs.....	20,467.63		¹ 678.71
Snow and sand fences and snowsheds.....	148.65		¹ 4.93
Signals and interlockers.....	202,022.75		¹ 6,699.07
Telegraph and telephone lines.....	81,409.71		¹ 2,699.55
Buildings, fixtures, and grounds.....	185,940.79		¹ 6,165.80
Roadway machines, small tools, and supplies.....	13,322.61		¹ 441.78
Injuries to persons.....	1,126.61		¹ 37.36
Stationery and printing.....	3,015.88		¹ 100.01
Insurance.....	4,303.22		¹ 142.69
Other expenses.....	6,312.31		¹ 209.32
Total.....	1,622,614.27		¹ 53,805.91
Maintenance of equipment:			
Superintendence.....	52,229.41		² 190.27
Steam locomotives—			
Repairs.....	789,267.11		² 29,229.00
Retirements.....	994.44		² 36.85
Depreciation.....	129,709.02		² 4,936.26
Car—			
Repairs.....		\$2,115,228.84	² 7,690.06
Retirements.....		19,557.67	² 71.14
Depreciation.....		678,107.91	² 6,466.46
Work equipment—			
Repairs.....	46,276.25		¹ 1,534.52
Retirements.....	88.13		¹ 2.92
Depreciation.....	4,932.42		¹ 163.52
Shop machinery.....	26,221.99		¹ 869.59
Injuries to persons.....	803.08		² 2.92
Stationery and printing.....	5,857.85		² 21.32
Insurance.....	6,623.06		² 24.05
Other expenses.....	12,321.97		² 408.60
Total.....	1,075,324.73	2,812,894.42	45,647.45
Transportation:			
Superintendence.....	121,364.74		¹ 4,024.45
Dispatching trains.....	99,905.39		² 3,699.60
Station employees—passenger.....	440,608.48		² 2,790.06
Station supplies and expenses.....	90,647.29		¹ 3,005.86
Train engineers—passenger.....	328,582.41		² 12,169.33
Engine-house expenses—train.....	100,430.01		² 3,718.77
Fuel for train locomotives—passenger.....	284,273.40		² 10,527.96
Water for train locomotives.....	62,520.32		² 2,315.24

¹ 3.316 per cent of passenger expenses.

² Average per freight-car miles \times milk-car miles.

³ Average per passenger-train miles \times milk-train miles.

⁴ 2 cents per mile \times milk-train miles.

⁵ 2.8 mills per mile \times milk-car miles.

⁶ Actual cost of handling milk at stations on Philadelphia division based on time consumed by employees on account thereof.

	Entire pas- senger-train expenses.	Entire freight- train expenses.	Appor- tioned to milk service.
Transportation—Continued.			
Lubricants for train locomotives.....	\$11,908.00		¹ \$441.03
Other supplies for train locomotives.....	14,012.46		¹ 518.25
Trainmen—passenger.....	363,747.47		¹ 12,061.87
Train supplies and expenses—freight—			
Refrigeration.....			¹ 8,854.09
Lubricants.....			¹ 82.80
Signal and interlocker operation.....	74,707.97		¹ 2,767.43
Crossing protection.....	7,771.76		¹ 287.75
Clearing wrecks.....	2,264.99		¹ 75.11
Telegraph and telephone operation.....	52,947.47		¹ 1,755.74
Stationery and printing.....	26,060.15		¹ 964.56
Other expenses.....	7,221.08		¹ 239.45
Damage to property.....	1,925.76		¹ 63.86
Damage to live stock on right of way.....	1,063.76		¹ 35.27
Total.....	2,091,962.91		70,398.57
Traffic:			
Superintendence.....	29,988.91		¹ 994.43
Outside agencies.....	1,917.99		¹ 1,917.99
Traffic associations.....	1,741.46		¹ 57.75
Stationery and printing.....	11,531.36		¹ 382.38
Insurance.....	27.23		¹ .90
Other expenses.....	105.70		¹ 3.50
Total.....	45,312.65		3,356.95
General:			
Salaries and expenses of general officers.....	22,655.61		¹ 751.27
Salaries and expenses of clerks and attendants.....	111,730.17		¹ 3,704.97
General office supplies and expenses.....	18,069.51		¹ 599.18
Law expenses.....	21,150.78		¹ 701.86
Insurance.....	118.40		¹ 3.93
Relief department expenses.....	23,296.37		¹ 772.51
Pensions.....	61,125.97		¹ 2,026.94
Stationery and printing.....	8,353.22		¹ 276.99
Other expenses.....	11,313.68		¹ 375.16
Valuation expenses.....	3,149.35		¹ 104.43
Total.....	280,963.06		9,316.74

¹ Average per passenger-train miles \times milk-train miles.

² 3.316 per cent of passenger expenses.

³ Actual amount charged to operating expenses.

⁴ Cost per freight-car mile eastern Pennsylvania division \times milk-car miles.

⁵ Philadelphia division proportion of the total amount of salaries and expenses on account of the office of the milk agent.

The actual earnings for the year from milk and cream traffic on the Philadelphia division were \$207,455.86. The expense on account of this traffic, as shown by the above table, was \$182,525.62, leaving a net revenue of \$24,930.24, or an operating ratio of 87.98 per cent. The figures do not include taxes. The operating ratio so ascertained for the milk traffic is compared with operating ratio of 76.67 per cent for the year 1914 for all traffic on the Pennsylvania Railroad and on all traffic on the Philadelphia division for the same period of 72.06 per cent.

The Pennsylvania separated expenses between passenger and freight traffic on the following basis: About 65 per cent of operating expenses is naturally divided between passenger and freight traffic, and the balance is common to both services. The common expenses were divided generally on the basis of train-miles. In a few instances other bases were used.

The basic figures upon which the expenses of the milk business were computed by the witness were in most instances the passenger-train

expenses. In some cases, it will be noted, freight expenses were used. In the maintenance of way and structures item the factor used was 3.316 per cent of passenger-train expenses. The factor represents the percentage which the car-foot mileage in milk service bears to the total car-foot mileage in passenger-train service. Milk car-foot mileage is the number of square feet in the cars devoted to milk service, multiplied by the mileage which each car made; passenger car-foot mileage is the number of square feet in cars devoted to passenger service, multiplied by the mileage. Actual measurements of cars were made for three weeks, one each in the months of May, August, and November, 1913, as representative of passenger service. Tests were on an individual train basis, and the computations which represent the car-foot mileage are based upon the individual train. That is, if a train was under observation and the test showed that a certain per cent of the total car space was in milk service, express service, mail service, and passenger service, the car-foot miles for the year for that train were computed on the basis of the percentages shown.

With regard to the superintendence of maintenance of equipment, the basis used was the revenue train-miles. The total car-miles were reduced to a train-mileage basis by dividing the total milk car-foot miles by 6, which is asserted to be the general average of cars in each train. Steam locomotive repairs were apportioned on the basis of the average per passenger-train mile and per milk-train mile. Depreciation was computed at the rate of 2 cents per train-mile. This amount is ascertained from a reduction of the depreciation at 4 per cent per annum upon the original cost to a locomotive mileage basis. In other words, 4 per cent of the original cost of a locomotive equals the item of depreciation per year. That item, divided by the mileage, gives the unit figure per mile. The same method is generally used by the Pennsylvania in setting up depreciation of all train equipment. Car depreciation is figured on a basis of 2.8 mills per mile. In computing the car repairs item for the milk service, freight-car repairs were taken, for the stated reason that cars in milk service more nearly approximate freight equipment than they do passenger equipment, although the average cost of a freight car is about \$1,000, and the lowest cost of a car used in milk service is \$1,595. General expenses are computed on the basis that the milk car-foot miles bear to the total car-foot miles in passenger service.

The above table, with the key below it, is explanatory of the method of the calculations with respect to the other account items and need not be further discussed. The exhibit does not include yard expenses due to passenger or milk service.

An exhibit similar to the above was submitted with a view to showing operating expenses as to milk and cream on all lines of the Pennsylvania east of Pittsburgh and Erie, Pa., for the year 1914. It is

not necessary to reproduce the exhibit here. The results reached from the figures submitted are as follows:

Gross earnings from milk and cream traffic.....	\$990, 115. 72
Expenses.....	\$1, 063, 574. 59
Excess of expenses.....	\$73, 458. 87
Operating ratio..... per cent..	107. 42

The witness was of opinion that the higher operating ratio on the system as a whole, as compared with the Philadelphia division, was due to the greater density of traffic and to the fact that shipments were received in larger quantities on the latter, and to the long hauls from points on the former. This witness was of the opinion that shipments from points on the Buffalo, N. Y., division were transported to Philadelphia at unremunerative rates.

It is admitted by counsel for the Pennsylvania that it is impossible to segregate with precision and accuracy the cost of handling milk and cream. It is contended, however, that the calculations fairly approximate the expense of handling these commodities on the Philadelphia division and the system generally. Counsel for the Philadelphia dealers and others attacked the figures as unreliable and misleading.

The division of expenses between passenger and freight traffic on a train-mile basis is criticized as being unjust to the passenger business. The testimony of W. J. Cunningham, professor of transportation at Harvard University, is relied on to sustain this view. His testimony in this proceeding on that subject was as follows:

The first method, of dividing maintenance of way and structures expenses between passenger and freight, and that used by the Pennsylvania Railroad since the forties, I believe, is to divide those expenses on a train-mile basis, apportioning to passenger the passenger-train mileage proportion of the train-miles. That basis, obviously, overcharges the passenger service, because it gives just as much weight to the average freight train of 30 cars, and a passenger car on the car-mile basis is charged with, say, six times as much as a freight car.

It is shown that the passenger-train mileage of the Pennsylvania is greater than its freight-train mileage; that its passenger revenue is less than 37 per cent of its freight revenue; and that its passenger-car mileage is less than 14 per cent of its freight-car mileage. It is contended that the maintenance of way and structures account should be apportioned on a car-mile basis rather than on a train-mile basis, which would reduce the passenger proportion to one-fourth that shown in the statement submitted.

It is further shown that the average weight of cars used in the milk service is much less than the average weight of cars used in passenger-train service, a factor that was not considered in the calculations of the witness; that the expenses of the terminals at Broad street station, Philadelphia, Camden, West Philadelphia, and Harrisburg had been included in the Philadelphia division expenses, and

the passenger terminals at Altoona, Pa., Washington, D. C., Atlantic City, N. J., and Baltimore, Md., in addition to the others had been included in the expenses of the milk business on the whole system, although the terminals are used only for passenger business and are not required for the milk business; that a considerable proportion of the expenses were apportioned between passenger and milk traffic on the basis of milk-train miles; and that the selection of six cars as an average number of milk cars in a train ignored entirely the element of distance the trains and cars are run. For example, it is shown that a train from New York state points during the month of July, 1914, averaged 10.9 cars and moved over a distance of 1,000 miles, counting the loaded and empty movement. The actual car-mileage per day was 10,900. Another train during the same month operated from Oxford, Pa., with a train-mileage of 94 and with three cars. The car-mileage was, therefore, 282 for the loaded movement. The two trains performed 1,094 train-miles per day, with a car-mileage of 11,182. If the car-mileage is divided by 6, the result is 1,863 train-miles, as compared with the actual train-mileage of 1,094. It is the contention that the figures used are based on constructive train-mileage largely in excess of the actual train-mileage.

It is further contended by Philadelphia dealers that the operating expense figures show that the revenue of the year 1914 is upon the basis of space occupied by the milk traffic during the year 1913. In response to this, the Pennsylvania states that the only justifiable conclusion is that the milk car-foot mileage has been understated, admitting that there was an increase of milk traffic in 1914 over 1913. The milk car-foot mileage was used to divide the expenses, and it follows that the expenses which have been attributed to the milk traffic are less than might have been apportioned.

We have given the exhibits filed by the Pennsylvania careful consideration. There are a number of criticisms that might be made of the bases used in some of the calculations. For instance, in car repairs and locomotive repairs, there are in the possession of the Pennsylvania actual figures of the repairs made to each car in the milk service, and in the passenger service, and it would appear that apportionment of these figures on the basis used was in lieu of exact information at hand. It is not thought necessary to go further into detail with respect to the figures presented, but it may be conceded, we think, that the milk traffic, which includes icing, caretaking, and the return of empty containers, is conducted at a higher operating ratio than general traffic. We are not convinced from our study of the figures that they demonstrate that the milk and cream business of the Pennsylvania, as a whole, is conducted for less than operating expenses. We do not understand that the Pennsylvania contends that it is losing money on its milk and cream business as a whole.

On final brief, the contention is that the exhibits support the assertion of the Pennsylvania that its present rates and charges on milk and cream to Philadelphia and other points east of Pittsburgh and Erie, Pa., are on the whole not unreasonable. We are of opinion that the cost study and conclusions drawn therefrom by the witness indicate that the revenue received by the Pennsylvania is not unduly high.

Philadelphia dealers contend that the circumstances and conditions surrounding the transportation of milk warrant the conclusion that the traffic is highly remunerative at present rates. They show that milk and cream shipments are made daily in large volume, thus insuring maximum use and revenue from a limited amount of equipment; that the milk traffic does not require the maintenance of expensive terminal facilities; and that the labor cost of handling the traffic is not high. The Pennsylvania shows that the service is practically an express train service in both directions; that it is adapted to meet the needs of the business and is satisfactory; that the character of the service has been steadily improved at increased cost of operation; and that it is special in character and requires constant attention and expense in its superintendence. It is asserted that no other traffic transported by the Pennsylvania receives the same amount of attention, and due to its prompt and efficient handling there are practically no loss and damage claims.

It is further contended by Philadelphia dealers that rates now in effect by other carriers in different parts of the country, and that decisions of this Commission and state commissions, indicate that present rates of the Pennsylvania are unreasonable. Similar contentions were made by New York dealers in *Milk and Cream Rates to New York City*, 45 I. C. C., 412, and, for reasons given in that case, and on this record, we do not find that the comparisons are convincing that on the whole the rates of the Pennsylvania here under consideration are unreasonable.

Philadelphia dealers assert that a zone system similar to that now in effect should be established and maintained for the future. On argument they suggested that the following rates, in cents per 40-quart can, with other cans in proportion, be prescribed:

Zones (miles).	Milk, etc.		Cream, condensed milk, etc.	
	L. C. L. ¹	C. L.	L. C. L. ¹	C. L.
1 to 20.....	11.4	87½ per cent of l. c. l. rates.	25 per cent over l. c. l. milk rates.	25 percent over c. l. milk rates.
21 to 40.....	13.9			
41 to 60.....	16.1			
61 to 80.....	18.0			
81 to 100.....	19.7			
101 to 120.....	21.3			
121 to 140.....	22.8			
141 to 180.....	24.0			
181 to 220.....	25.0			
221 to 260.....	26.0			
261 to 340.....	27.0			
341 to 420.....	28.0			
421 to 500.....	29.0			

¹ Less-than-carload rates to include icing when necessary.

The proposed scale was compared with rates prescribed by the Public Service Commission of the state of New York in *Milk Dealers v. Railroad Companies*, 2 P. S. C., 2d Dist., N. Y., 374, in which that Commission prescribed a rate of 15 cents per 40-quart can of milk to Buffalo, N. Y., from points within 75 miles of the city. The Commission fixed the rate for a maximum distance of 75 miles, but it was shown that the weighted average haul was but 35 miles.

The Pennsylvania shows that the rates into Buffalo are on a very low basis, not approached on any other part of its system; that they do not include icing; and that milk and cream is hauled to Buffalo in baggage cars in passenger trains. It is further shown that under the proposed rates the gross revenue of the Pennsylvania would be decreased about 34 per cent. We are unable to find that the zones and rates proposed by the Philadelphia dealers are reasonable.

From the facts of record we are unable to find that the revenue received by the Pennsylvania from the rates on shipments of milk and cream to Philadelphia and the other points involved is unreasonably high. While the rates as a whole are not shown to be unreasonable, it does not follow that the adjustment of the rates is upon a reasonable basis.

The situation with respect to rates of the Pennsylvania to Philadelphia is not materially different from that considered with respect to rates to New York. On final brief the Pennsylvania contends that—

Rates to Philadelphia are closely interrelated with those applying into New York; that both cities draw their supply of milk and cream to a large extent from the same territory; and that a difference in rates would necessarily react prejudicially against the city to which rates might be higher. * * * Since the Philadelphia rates are on the same basis as the New York rates, it necessarily follows that the conclusion which should be reached with respect to New York rates applies with equal force to the Philadelphia rates, particularly in view of the interrelationship of these rates with the New York rates.

The milk agent of the Pennsylvania testified that rates from remote points to New York and Philadelphia were not remunerative at this time. This is corroborated by the chief statistician of the Pennsylvania. Why should that carrier continue to transport milk from such points at rates which it concedes are unremunerative? As it is securing a return on the traffic as a whole, the charges on shipments from near-by points are drawn upon to compensate it for the unremunerative charges it maintains on shipments from remote points. Such a basis of charges can not be justified.

We find that the present zone adjustment and charges maintained by the Pennsylvania on shipments of milk and cream to Philadelphia and other points are unreasonable and unduly prejudicial to producers and shippers from near-by points, and unduly prefer producers and shippers from distant points.

The evidence relates almost wholly to circumstances and conditions surrounding the transportation of milk and cream to Philadelphia. There is a considerable movement of milk and cream to the southern New Jersey seacoast resorts in the summer months, and to Atlantic City throughout the year. We are of opinion that the same basis of rates should be prescribed to the latter points as to Philadelphia. So far as other important consuming points on the Pennsylvania are concerned, shipments of milk and cream move over intrastate routes and for comparatively short distances.

Upon the facts of record, we are of opinion and find that rates, in cents per 40-quart can, for the interstate transportation of milk, buttermilk, skim milk, and pot cheese in less than carloads from points on the lines of the Pennsylvania Railroad Company, Philadelphia, Baltimore & Washington Railroad Company, and West Jersey & Seashore Railroad Company to Philadelphia, Pa., Atlantic City, and Cape May, N. J., and points on the New Jersey seacoast located between the two latter points, in baggage, milk, or refrigerator cars in milk or passenger trains, iced when necessary, such rates to include the return of the empty containers, should not exceed the following:

Miles.	40-quart can.	Miles.	40-quart can.
0 or under.....	15.5	Over 320 but not over 330.....	36.5
Over 10 but not over 20.....	16.5	Over 330 but not over 340.....	37
Over 20 but not over 30.....	17.5	Over 340 but not over 350.....	37.5
Over 30 but not over 40.....	18.5	Over 350 but not over 360.....	37.9
Over 40 but not over 50.....	19.4	Over 360 but not over 370.....	38.3
Over 50 but not over 60.....	20.3	Over 370 but not over 380.....	38.8
Over 60 but not over 70.....	21.1	Over 380 but not over 390.....	39.2
Over 70 but not over 80.....	21.9	Over 390 but not over 400.....	39.6
Over 80 but not over 90.....	22.7	Over 400 but not over 410.....	40.1
Over 90 but not over 100.....	23.4	Over 410 but not over 420.....	40.5
Over 100 but not over 110.....	24.1	Over 420 but not over 430.....	40.9
Over 110 but not over 120.....	24.8	Over 430 but not over 440.....	41.3
Over 120 but not over 130.....	25.5	Over 440 but not over 450.....	41.7
Over 130 but not over 140.....	26.2	Over 450 but not over 460.....	42.1
Over 140 but not over 150.....	26.8	Over 460 but not over 470.....	42.5
Over 150 but not over 160.....	27.4	Over 470 but not over 480.....	42.9
Over 160 but not over 170.....	28	Over 480 but not over 490.....	43.3
Over 170 but not over 180.....	28.6	Over 490 but not over 500.....	43.7
Over 180 but not over 190.....	29.2	Over 500 but not over 510.....	44.1
Over 190 but not over 200.....	29.8	Over 510 but not over 520.....	44.5
Over 200 but not over 210.....	30.4	Over 520 but not over 530.....	44.9
Over 210 but not over 220.....	31	Over 530 but not over 540.....	45.3
Over 220 but not over 230.....	31.5	Over 540 but not over 550.....	45.7
Over 230 but not over 240.....	32	Over 550 but not over 560.....	46
Over 240 but not over 250.....	32.5	Over 560 but not over 570.....	46.4
Over 250 but not over 260.....	33	Over 570 but not over 580.....	46.8
Over 260 but not over 270.....	33.5	Over 580 but not over 590.....	47.1
Over 270 but not over 280.....	34	Over 590 but not over 600.....	47.5
Over 280 but not over 290.....	34.5	Over 600 but not over 610.....	47.9
Over 290 but not over 300.....	35	Over 610 but not over 620.....	48.2
Over 300 but not over 310.....	35.5	Over 620 but not over 630.....	48.5
Over 310 but not over 320.....	36		

Rates on containers other than those holding 40 quarts are now made by the Pennsylvania with reference to the capacity; that is, the rates on 20-quart cans and 10-quart cans are one-half and one-

fourth, respectively, of the rates on 40-quart cans. The rates on larger and smaller cans should be measured by those applicable to 40-quart cans, but not measured solely with reference to capacity. For instance, a 20-quart can occupies nearly as much floor space as a 40-quart can, and the weight is considerably more than one-half of that of a 40-quart can. We find that the less-than-carload rates on milk, buttermilk, skim milk, and pot cheese, in the containers set forth below should not exceed the following percentages of the rates hereinabove found to be reasonable on these commodities in 40-quart cans:

	Per cent.
20-quart cans.....	56
23-quart cans.....	63
24-quart cans.....	65
30-quart cans.....	79
46-quart cans.....	113

Philadelphia milk dealers suggested in the original proceedings that rates on cream should not be more than $33\frac{1}{2}$ per cent higher than the rates on milk. At the hearing in the general investigation they asked that rates be established not more than 25 per cent higher. As above stated, the rates of the Pennsylvania on cream to Philadelphia are about 18 cents per 40-quart can higher than the rates on milk from points in zones 3 to 6, inclusive, and 15 cents higher from points in zones 1 and 2. In the *New England Milk Case*, 40 I. C. C., 699, 735, for reasons therein stated, we prescribed rates on cream 25 per cent higher than the rates on milk. Cream is ordinarily shipped much longer distances than milk, and it is desirable that cream rates should bear a uniform relation to the rates on milk. We are of opinion and find that rates on cream and condensed milk in less than carloads to be maintained for the future by the Pennsylvania on shipments to Philadelphia and the other points here involved should not exceed those on milk by more than 25 per cent.

The Philadelphia dealers complain that the carload rates on milk are unreasonable and discriminatory as compared with the less-than-carload rates to the extent that they exceed 75 per cent of the latter rates. The rates now maintained by the Pennsylvania on carload shipments are 87 per cent of the less-than-carload rates. Following the *New England Milk Case*, *supra*, we find that the rates for the transportation of carload shipments of milk should not exceed $87\frac{1}{2}$ per cent of those herein prescribed for the transportation of less-than-carload shipments.

The Pennsylvania does not now publish carload rates on cream to Philadelphia and the other points here in question. That carrier asserts that there is no demand for carload rates on cream and therefore none should be prescribed. In the *New England Milk Case*,

supra, we prescribed carload rates on cream not in excess of 87½ per cent of the less-than-carload rates on that commodity. We find that carload rates should be established by the Pennsylvania on shipments of cream to Philadelphia and the other points above referred to, and that such rates should not be more than 87½ per cent of the less-than-carload rates on the same commodity.

We are also of the opinion that provision should be made for mixed carload shipments of milk and cream, the charges on such shipments to be based on the per can rates for each commodity in carloads, subject to the minimum provided for milk.

The Philadelphia dealers asked that the present carload minimum on milk of 8,000 quarts now maintained by the Pennsylvania be reduced to 4,000 quarts. There is no evidence of record upon which a reduction of the minimum could be based. The cars used for this traffic can be loaded to this minimum; and the tariffs also provide that the carload rate will apply when the car is loaded to the floor capacity. The minimum here complained of is in line with the minima generally in effect on the same traffic to New York City.

It is further contended by the Philadelphia dealers that the rates maintained by the Pennsylvania on milk and cream, in bottles, in cases, are unreasonable as compared with the rates on shipments in cans. The same relationship is maintained between the rates on shipments in cans and on shipments in bottles as to New York City. The rate on 40 quarts of milk when shipped in quart bottles is 140 per cent of the rate on a 40-quart can of milk; when shipped in pint bottles, 160 per cent; and when shipped in half-pint bottles, 180 per cent. The question of the relationship between these containers is fully discussed in the *New York Case*, and for reasons there stated and on the facts in this case, we are unable to find that the present relationship between the rates on shipments in bottles and cans is unreasonable.

From points in southern New Jersey shipments of milk and cream consigned to Philadelphia, via Cooper's Point, Camden, N. J., under tariff provisions, must be called for at Cooper's Point station. The rates include ferriage across the Delaware River to Philadelphia, ferry tickets being furnished by the Pennsylvania. The milk is unloaded into wagons of the Philadelphia dealers, and under tariff provisions, the Pennsylvania transports the wagons by boat from Cooper's Point to Philadelphia without additional charge. A question arose at the hearing whether the milk thus transported moved in interstate commerce, and the matter was submitted by all parties to the Commission for determination. Under the facts stated we hold that the shipments moved interstate and are subject to our jurisdiction. *New York-Jersey City Ferry Rates*, 37 I. C. C., 103.

An order will issue requiring the Pennsylvania Railroad Company, the Philadelphia, Baltimore & Washington Railroad Company, and the West Jersey & Seashore Railroad Company to conform to the findings made herein.

THE PHILADELPHIA & READING.

As above stated, about 54,000,000 quarts of milk and cream were transported to Philadelphia during the year 1915 by the Reading, about 46,500,000 quarts moving over intrastate routes.

The Wilmington & Northern branch of the Reading extends from Birdsboro, Pa., to Wilmington, Del. Shipments from points on this branch move in both directions; that is, by northbound trains through Reading, Pa., an intrastate movement, and by southbound trains to Elsmere Junction, Del., near Wilmington, and thence by the Baltimore & Ohio, an interstate movement.

The interstate rates on less than carload shipments from all points on this branch to Philadelphia are 20 cents per 40-quart can on milk and 40 cents on cream. No carload rates are published. This branch is intersected at various points by direct lines leading from Philadelphia. The following table shows the junction points and the distances to Philadelphia via the direct lines and via Elsmere Junction:

Junction.	Distances via—		
	P., B. & W.	Pa. R. R.	P. & R. and B. & O.
	Miles.	Miles.	Miles.
Chadds Ford Junction, Pa.	27		43.9
Coatesville, Pa.		39	61.9
Suplee, Pa.		48	74.9

The first loading point from which shipments are forwarded to Philadelphia via Elsmere Junction is Elverson, Pa., the distance being 76 miles; and the first loading point from which shipments are forwarded to Philadelphia via Reading is Pocopson, Pa., the distance being 95 miles. It is manifest from the location of this line and the routes used in shipping milk and cream to Philadelphia that the rates hereinabove prescribed on shipments over the Pennsylvania should not be prescribed on interstate shipments from points on this branch of the Reading.

The rates now in effect on milk are about the same as those already prescribed, being slightly higher from points south of Chadds Ford Junction and slightly lower from that point and points north thereof. As above stated the rates on cream are twice as high as those on milk. For the reasons above set forth the rates on this commodity should

not exceed those on milk by more than 25 per cent. Carload rates should be established on both commodities and should not exceed $87\frac{1}{2}$ per cent of the rates on less than carload shipments. No order will be entered at this time with respect to shipments from these points, but the carriers will be expected to establish rates in accordance with the above views.

Other points on the Reading from which interstate shipments move regularly to Philadelphia are located on the New York division. The average distance from the seven points on this division from which shipments are forwarded is 52 miles. About 2,700,000 quarts of milk and cream were shipped from these points to Philadelphia during the year 1915, or about one-twentieth of the total amount transported by the Reading.

The rate from all interstate points on this division is 24 cents per 40-quart can on milk and 48 cents on cream. No carload rates are published. The rate prescribed on milk in less than carloads for a distance of 52 miles over the Pennsylvania is 20.3 cents. We find that the rates on milk, skim milk, buttermilk, pot cheese, cream, and condensed milk in carloads and less than carloads, from points on the Reading in New Jersey to Philadelphia are unreasonable and unduly prejudicial to the extent that they exceed the rates hereinbefore found to be reasonable on the same commodities when shipped over the Pennsylvania, which latter rates will be prescribed as maxima for the future.

For more than six months prior to the hearing there had been no interstate shipments from or to points on the line of the Atlantic City Railroad. Some interstate shipments in carloads are occasionally forwarded during the summer months to Atlantic City and other seacoast resorts over this line. Shipments from points on the Atlantic City Railroad to Philadelphia are delivered in Camden. No joint rates are in effect to or from points on this line. The present interstate less than carload rates per 40-quart can, from Camden, N. J., a distance of about 55 miles, to Atlantic City, N. J., are 20 cents on milk and 40 cents on cream, while the rates already prescribed for a distance of 55 miles are 20.3 cents on milk and 25.4 on cream. The rate on milk from Camden to Cape May, N. J., a distance of about 78 miles, is 25 cents per 40-quart can; the rate prescribed is 21.9 cents.

In view of the fact that there is no regular movement of milk and cream to or from points on this line, the rates above required to be established on shipments over the Pennsylvania will not be prescribed. However, the rates on cream should not exceed those on milk by more than 25 per cent, and carload rates not in excess of $87\frac{1}{2}$ per cent of the less than carload rates should be established on both commodities. This carrier will be expected to establish these relationships.

BALTIMORE & OHIO.

The Baltimore & Ohio transports milk and cream from points north of the Susquehanna River to Philadelphia, a maximum distance of 56 miles. The amount shipped over this line is comparatively small. A large part of the milk transported to Philadelphia is received from the Reading at Elsmere Junction. The less than carload rates maintained by the Baltimore & Ohio are the same to Philadelphia from all shipping points on the Philadelphia division, 20 cents per 40-quart can on milk and 35 cents on cream. The carload rates are 2 cents less on milk and 3 cents less on cream, and include refrigeration.

For the reasons above stated we find that the rates for the interstate transportation of milk, skim milk, buttermilk, pot cheese, cream, and condensed milk in carloads and less than carloads from points on this line to Philadelphia are unreasonable and unduly prejudicial to the extent that they exceed the rates heretofore prescribed on shipments of the same commodities over the Pennsylvania, which latter rates will be prescribed as maxima for the future.

The complaints in Nos. 7826 and 8785 will be dismissed.

45 I. C. C.

No. 7788.

IDA S. GRAUSTEIN

v.

BOSTON & MAINE RAILROAD ET AL.

No. 8558.

MILK AND CREAM INVESTIGATION.

Submitted May 5, 1916. Decided June 21, 1917.

Reparation awarded for violations of the provisions of the act by the Boston & Maine Railroad and Rutland Railroad Company with respect to rates charged, train service and equipment furnished for transportation of milk in carloads from points in Vermont to Boston, Mass.

William A. Graustein for complainant and intervener.

Charles S. Pierce and *W. A. Cole* for Boston & Maine Railroad.

Charles H. Blatchford for Maine Central Railroad Company.

Edwin W. Lawrence for Rutland Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

In this complaint, filed December 31, 1914, it is alleged in substance that the charges of defendants for the transportation of milk in carloads from certain points in Vermont on the line of the Rutland Railroad Company, hereinafter called the Rutland, to Boston, Mass., are unreasonable; that complainant paid higher charges for this transportation than were paid by competitors shipping to Boston from points in Maine, New Hampshire, and Vermont on the Maine Central Railroad, and points in New Hampshire and Vermont on the Boston & Maine Railroad; that the higher charges were unduly prejudicial to complainant and unduly preferred complainant's competitors; that the Boston & Maine unjustly discriminated against complainant in furnishing cars and in train and switching service; that the Rutland unjustly discriminated against complainant in train service and in refusing to erect and maintain loading stations and pasteurizing plants at points on its line for complainant while contemporaneously furnishing and maintaining such stations and plants for shippers of milk to New York City; and that the refusal of the Rutland and the Boston & Maine to establish and maintain joint rates on milk in carloads from points on the Rutland to Boston was unduly prejudicial. By an amendment filed February 17, 1916, it is

alleged that the Rutland and the Boston & Maine unjustly discriminated against complainant in refusing to extend credit on accruing freight bills. Reparation is asked.

On February 17, 1916, the Boston Condensed Milk Company intervened and asked reparation on shipments of milk, in carloads, from points on the Rutland, in the state of Vermont, to Boston. These shipments were made prior to October 1, 1914, and the basis of the claim is that the charges of the Rutland and the Boston & Maine were unreasonable and unduly prejudicial.

This case was consolidated with the *Milk & Cream Investigation*, Docket No. 8558, and was heard in part in connection with that proceeding. Rates and practices of carriers applicable to and governing interstate transportation of milk and cream between points in the New England states were considered in the *New England Milk Case*, 40 I. C. C., 699. In that case we found that the rates and practices maintained by respondents with respect to interstate shipments of milk and cream in carloads from points in the New England states to Boston were unlawful. Lawful and reasonable rates and practices were prescribed for joint and several application over the lines of the respondents.

Prior to October 1, 1914, complainant made contracts with farmers in Vermont under which the latter agreed to deliver milk to certain stations on the Rutland north of Rutland, Vt. Arrangements were made with the Rutland to commence the operation of a car from Vergennes on October 1, 1914. The car was to stop to pick up milk at New Haven Junction, Beldens, Middlebury, Salisbury, Leicester Junction, and Brandon, and to stop on the return trip to unload empty milk cans at those stations. The car was operated under what was known as the New England or leased car system, fully described in *Albree v. B. & M. R. R.*, 22 I. C. C., 303, and *New England Milk Case*, *supra*. It was transported by the Rutland from Vergennes to Bellows Falls, and by the Boston & Maine from Bellows Falls to Boston. Beginning October 1, 1914, a car was moved daily for complainant until November 7, 1915, after which it was moved every other day.

While it is alleged that the charges maintained by defendants on milk in carloads from points on the Rutland to Boston were unreasonable *per se*, the evidence relates almost entirely to the allegation of undue prejudice and preference arising out of the rate adjustment. It is stated by complainant that in 1890 joint rates were published by the Rutland on milk in carloads to Boston from points in Vermont in connection with the Fitchburg Railroad Company, now a part of the Boston & Maine, and that such rates were maintained for a number of years. Few schedules naming rates on milk were filed with this Commission by New England carriers prior to

1896, and we have been unable to verify complainant's statement. From an examination of the schedules on file it appears that the Rutland has not published joint rates on milk in carloads from points on its line to Boston in connection with the Boston & Maine or any other carrier since 1896. It is also stated that a joint rate of \$40 per car was maintained for a number of years prior to 1896 from Vergennes to Boston. The rate on milk in carloads from Vergennes and the other points from which complainant shipped to Bellows Falls from 1896 to February 15, 1915, was \$25 per car. On that date this rate was increased 5 per cent to \$26.25. This rate was applicable both to passenger and freight service. On December 1, 1913, the rate of the Boston & Maine from Bellows Falls to Boston for passenger train service was \$37.71 per car per trip, this rate being continued in effect until the establishment of the rates prescribed in the *New England Milk Case, supra*, and the rate for freight train service was 75 per cent of that for passenger train service, or \$28.28 per car per trip. The distance from Vergennes to Bellows Falls is 99 miles, and from Bellows Falls to Boston 114 miles. The minimum provided in the Rutland schedules was 25,000 pounds, and in the Boston & Maine schedules 8,925 quarts, which amounted to about 25,225 pounds.

Joint rates on milk in carloads in freight cars in freight trains from all points on the Maine Central to Boston were maintained by the Maine Central in connection with the Boston & Maine. These rates were on the same basis as those of the Boston & Maine; that is, 75 per cent of the rates published by that carrier for transportation in milk or passenger trains. These rates were established as a result of an effort made by the Maine Central and Boston & Maine in 1902 to build up a milk-shipping business from points in Maine and other states to Boston. Transportation of milk in freight cars in freight trains was an experiment which has proved reasonably satisfactory to shippers and carriers. The first joint rates established were from \$25 to \$30 per car according to distance. On July 14, 1911, the rates were increased to \$30 and \$35 per car, and on August 6, 1912, to \$37 per car from practically all points on the Maine Central. From a few stations in northern New Hampshire, such as West Stewartstown, the rate was \$44, and from a few less distant points, such as Auburn, Me., \$33.75.

The Boston & Maine reaches Newport, Vt., and its charge per car on milk from that point to Boston in passenger service was \$49.32, and in part passenger and freight service from \$40.41 to \$43.32 per car. The distance from Newport to Boston is 247 miles. From all points on the Boston & Maine system more than 165 miles from Boston the rate per car in passenger service was \$49.32 and in freight service \$37.

Complainant's shipments usually moved from Vergennes to Rutland in freight trains, while for reasons hereinafter set forth they moved from Rutland to Boston in passenger trains. The charges for this transportation on and after February 15, 1915, for a distance of 213 miles were \$63.96 per car, as compared with charges paid by complainant's competitors from Newport to Boston, a distance of 247 miles, of \$49.32 per car in passenger service and \$37 per car in freight service.

The defendants contend that no undue prejudice or unjust discrimination within the meaning of the act resulted from the maintenance of lower charges from points on the Maine Central to Boston than from points on the Rutland because circumstances and conditions of transportation are dissimilar. Traffic between Boston & Maine points and points on the Maine Central differs greatly in volume from that between points on the Boston & Maine and the Rutland. The total amount interchanged between the Boston & Maine and the Maine Central for the last three months of 1915 was 548,514 tons, while the traffic interchanged between the Boston & Maine and the Rutland for the same period was 52,121 tons. The Boston & Maine operates over four tracks for the greater part of the distance from Boston to Portland, the point of interchange with the Maine Central; from Boston to Bellows Falls, the point of interchange with the Rutland, it operates over two tracks for about one-half the distance and over one track for the remainder. The roadbed between Boston and Portland is practically at water level, while between Boston and Bellows Falls grades are frequent and heavy.

Rates from points on the Rutland to Boston are generally higher than those from points on the Maine Central similarly situated with respect to distance. Class rates from Vergennes to Boston range from 52.5 cents per 100 pounds, first class, to 16.3 cents, sixth class; from Thorndike, Me., to Boston, the distance being the same as from Vergennes, the class rates range from 39 cents, first class, to 13 cents, sixth class. Commodity rates to Boston on potatoes, hay, and apples are higher from points on the Rutland than from points on the Maine Central for similar distances. The rates of the Boston & Maine from Newport and points in northern New Hampshire are made over one line of railroad, while the transportation from Rutland points is by two lines.

These facts show that the circumstances and conditions surrounding the transportation from points on the Maine Central and on the Boston & Maine, on the one hand, and from points on the Rutland, on the other, were not in all respects similar. Rates from points on the Rutland, however, should not have been higher than the differences in circumstances and conditions justified. In the *New England Milk Case* we found that for service in freight cars in freight trains the

respondents should charge no more than 75 per cent of the charges found reasonable for transportation of milk in milk or refrigerator cars in passenger or milk trains. Transportation of milk in carloads to Boston from points on the Maine Central has always been in freight cars in freight trains. However, if we add to the rate of \$37 from Maine Central points 50 per cent because of differences in service and transportation conditions, such as density of traffic and more favorable grades, we would have a total charge of \$55.50 per car from points in Maine, or \$8.46 per car less than from Vergennes, since February 15, 1915, and \$7.21 per car prior to that date.

Under all the facts and circumstances appearing of record, we are of opinion and find that the relation of rates to Boston on milk in carloads maintained by the Maine Central in connection with the Boston & Maine from points in Maine, and by the Boston & Maine from points in Vermont, and by the Rutland and Boston & Maine from Vergennes and other points on the Rutland from January 1, 1914, to February 15, 1915, was unduly preferential to complainant's competitors and unduly preferred her competitors to the extent of \$7.21 per car and after the latter date to the extent of \$8.46 per car, and were therefore unlawful.

The Boston & Maine is the delivering carrier on shipments from points in Vermont from which complainant made shipments, and from points in Maine and New Hampshire from which her competitors made shipments. That carrier at any time could have put an end to the unlawful discrimination found to exist by an exercise of its power to refuse to continue the preferential joint rates with the Maine Central. *Coke Producers Asso. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C., 125, 144.

In making arrangements with the Rutland for transportation from Vergennes complainant asked that the car be attached to passenger train No. 54, which was scheduled to arrive at Vergennes daily at 9.02 a. m., at Rutland 10.40 a. m., and at Bellows Falls 1 p. m. For many years the Boston Condensed Milk Company and its predecessors had milk cars attached to that train. The officials of the Rutland testified that they were much relieved when the Boston Condensed Milk Company ceased shipping late in June, 1914, because they had felt that it was a burden to that train to attach milk cars, and that hauling the milk cars jeopardized its connections. They determined that it was for the best interest of the passenger service that milk cars should not be again attached to that train. At the time of complainant's application for a car the time card of the Rutland controlling the movement of trains from September 20, 1914, to June, 1915, was in effect. The management arranged for such service as it could without modification of the time card. Officials of the Rutland testified that train No. 54 was a local pas-

45 I. C. C.

senger train and made connections at Bellows Falls for Boston and at Troy, N. Y., for New York City, and that many complaints had been made by passengers on account of delays caused by "loading milk and failure to make such connections. There is no showing that the train made better connections after the milk car was no longer attached to it than before. This request was refused, and complainant was advised on September 25, 1914, that the car would be forwarded in an extra milk and freight train leaving Burlington, Vt., at 10 a. m., and arriving at Rutland in time for the car to go forward to Bellows Falls in passenger train No. 156, arriving there at 8.25 p. m. excepting Mondays and Tuesdays, when the car would be handled by a local freight out of Burlington, arriving at Rutland about the same time, and further excepting Sundays, when the car would be moved by the same train between Burlington and Rutland, and in train No. 158, leaving Rutland at 8.20 p. m., and arriving at Bellows Falls at 10.20 p. m. Complainant was also advised that the Rutland was not in a position to provide the necessary number of cars until new cars were received some time in November, and that this matter should be taken up with the Boston & Maine. On September 26, 1914, complainant protested by letter against the service offered on the following grounds:

The milk would be too "old" to sell in Boston; the milk would not keep in transportation; the service offered was discriminatory in favor of shippers of milk to New York City; complainant was not in a position to ship milk and have it delayed in transit under the proposed service; and the refusal to supply cars was not warranted. The request was made that the matter be further considered and proper transportation furnished. On September 29, 1914, the following telegram was sent by the assistant superintendent of the Rutland to station agents:

On and after October 1, No. 59's extra will leave Burlington about 10 a. m.; Vergennes about 11.25 a. m.; New Haven Junction about 12.20 p. m.; Beldens about 12.30 p. m.; Middlebury about 1 p. m.; Salisbury about 1.20 p. m.; Leicester Junction about 1.40 p. m.; and Brandon about 2 p. m., and will load milk at your stations. Please arrange accordingly.

October 1, 1914, the following notice was sent to agents:

Commencing to-day, October 1, the Graustein Milk Company will commence loading milk, starting from Vergennes, to be handled by train No. 26 Mondays and Tuesdays, and 59's extra on other days. This car will be loaded into at different points between Vergennes and Rutland and then forwarded to Bellows Falls for Boston on train 156 on week days and 158 on Sundays. In event train No. 26, Mondays and Tuesdays, does not make Rutland ahead of train No. 56 they will give this car to that train wherever they are overtaken. These trains will not leave Vergennes until 11.25 a. m.; New Haven Junction 12.20 p. m.; Beldens 12.30 p. m.; Middlebury 1 p. m.; Salisbury 1.20 p. m.; Leicester Junction 1.40 p. m.; Brandon 2 p. m. All concerned will be governed accordingly.

On October 10, 1914, agents were notified as follows:

Commencing Monday, October 12, the Graustein milk car on its loaded movement on Mondays and Tuesdays will be picked up by train No. 56 at Vergennes and placed for loading pick-up milk at all stations between Vergennes and Rutland at which there is milk for this car. This car will be handled on 59's extra on all other days of the week as at present. It will be handled south of Rutland by train No. 156 week days and No. 158 Sundays as now.

June 27, 1915, another notice was issued in which train No. 59's extra was changed to train No. 32. This train thereafter handled complainant's car on each day in the week except Monday, when it was hauled in train No. 56.

On October 13, 1914, complainant wrote to the vice president of the Rutland that it would be impossible for farmers to ship milk and get it to market in salable condition on train service such as was offered. The letter continued as follows:

Monday and Tuesday you require them to load their milk on train time of No. 56 and the rest of the week on train time of No. 26. There is a difference of very near four hours between these two train times, which would require different time for milking on different days. Again, No. 26 is a freight train and is not reliable. The farmers want a train as good as is furnished other milk dealers on your road and one they can rely on. I wired you yesterday that if you would put the car on No. 56 they would be satisfied. If not No. 56, they would also be satisfied with the milk train which you run for others. The return movement is satisfactory. More than one-half of our milk under contract up to date has not yet been shipping, the farmers refusing to ship until proper train service.

The distance from Vergennes to Rutland is 46 miles. The scheduled time of train No. 59's extra and train No. 32 for that distance was five hours and forty-five minutes, or about eight miles per hour. The evidence shows that the average running time was about six hours and fifty minutes, or about seven miles per hour. It is admitted by the Rutland that the service was not proper for picking up milk, but it is asserted that it was the best that could be done, as the complainant had but one car to move and that the Rutland could not afford to do more than it did for such traffic. Because of the irregular and uncertain time of arrival of the freight train at points between Vergennes and Rutland farmers refused to deliver milk to complainant's car, or left it standing on platforms, with the result that the milk soured in summer or froze in winter. Complainant lost customers at the points of origin, and also in Boston because of the delivery of poor milk, and her business was generally demoralized. Complainant was required to employ men at various points to load milk, and to employ men and teams to gather milk from the farmers in order to hold them to their contracts. Because of the delays and the slow movement of the train complainant used more than the usual quantity of ice and was put to other expenses, which would not have been incurred had reasonable train service been furnished.

It is contended by the Rutland that the fact that it was able to and did give passenger train pick-up service to shippers on the Bennington and Bellows Falls divisions at times of day which the complainant asserts were preferable for handling milk did not constitute unjust discrimination in favor of such shippers, while giving complainant freight train pick-up service on another part of its road where it could not reasonably provide passenger service. In answer to this contention it is to be said that for more than 20 years the Rutland gave passenger pick-up service between Vergennes and Rutland to complainant's predecessors. Passenger pick-up service was afforded on two days of the week during the period from October 1, 1914, to June 1, 1915, and on one day of the week thereafter. It is true that passenger train No. 56 was not so desirable as passenger train 54, yet complainant asked to have the car attached to that train or on milk train No. 88, the latter being used for transporting milk to New York City.

Complainant's car was attached to passenger trains at Rutland which were scheduled to leave for Bellows Falls at 6.25 p. m. on week days, and at 8.20 p. m. on Sundays, and to arrive at Bellows Falls at 8.25 p. m. and 10.30 p. m., respectively. These trains arrived at Bellows Falls too late to attach complainant's car to a through freight train of the Boston & Maine for Boston, and it remained on a siding without heat in winter until 3.10 a. m., at which time it was transported to Boston in a passenger train. The charge of the Boston & Maine for the passenger train service was 33½ per cent higher than was charged competitors who purchased milk at points on the Rutland and shipped it to Boston via Bellows Falls in time to have their cars attached to a through freight train. If complainant had been given the service requested, cars would have arrived at Bellows Falls in time to have been hauled to Boston in the through freight train.

No such service as was furnished complainant was at the time furnished any other shipper of milk from points on the Rutland to Boston. The only train which the Rutland would furnish complainant left Vergennes near the middle of the day. Complainant bought some milk at points south of Rutland on the Bellows Falls division, but the service was in the evening after 6.25 o'clock and she had difficulty in getting farmers to deliver milk. A large dealer in milk at Boston had morning passenger pick-up service from North Bennington toward Vergennes; and morning passenger pick-up service from Rutland south in the summer time. In the winter time the Rutland permitted this competitor of complainant to pick up milk in morning passenger service from Bellows Falls to Rutland, and the car was then hauled south to Bellows Falls in a passenger train. From the evidence in this record, we are of opinion and find that the

train service furnished by the Rutland was unduly prejudicial to complainant and unduly preferred complainant's competitors, and was therefore in violation of section 3 of the act.

It is alleged that the Rutland, with deliberate attempt to discourage complainant's shipments to Boston, failed upon reasonable request to furnish proper transportation of the car on its initial trip, and that such failure resulted in serious damage. On September 29, 1914, complainant secured a milk car from the Boston & Maine, which was loaded with empty cans for distribution to farmers at stations north of Rutland. The car arrived at Rutland at 2 a. m. on September 30. It was then attached to train No. 87, which transported cars loaded with empty containers of New York shippers, scheduled to leave Rutland at 6.50 a. m., and to arrive at Vergennes at 8.30 a. m. Before train No. 87 left Rutland, by order of some one not disclosed in the record, complainant's car was detached, and was sent forward in a local freight train which arrived at Vergennes at 6 p. m. on September 30. The result was that a number of farmers who had contracts with complainant made new contracts with New York dealers, and complainant lost them permanently. For some months complainant's cars went forward loaded light, while charges were collected on basis of the minimum. Complainant's representative testified, and it is not denied, that station agents of the Rutland on September 30 advised farmers who inquired for empty milk cans from complainant that they had no knowledge of the proposed movement of a "Graustein" car. It is to be noted that the telegram sent on September 29 by the assistant superintendent of the Rutland to the station agents referred only to extra train No. 59 and contained no information as to the shipper of milk. It was not until October 1, the date of the movement of the first loaded car, that the name of the shipper was given. Rutland officials testified that they did not know that it was necessary that the car on its first empty movement should be so transported that empty containers could be distributed to farmers. The important thing was, as they understood it, that the car should be at Vergennes on October 1 for the loaded movement. Prior to September 30, complainant's representative by personal interviews with Rutland officials and by telephone advised them of the necessity for the empty as well as the loaded movement. The officials testified that they had no recollection of requests for the movement of the car with the empties so that the farmers might be supplied. The requirements of the milk business as conducted under the New England system, with which the officials were familiar, should have suggested to them the necessity for distributing empty cans prior to the movement of the loaded car. Under all the circumstances shown of record, we are of opinion and find that the

Rutland, in plain neglect of the duty imposed by section 1 of the act, failed, after reasonable request, to furnish complainant such transportation of the car on its initial trip to Vergennes as the law requires.

Complainant had in service from October 1, 1914, until some time in November two milk cars of the platform type. On October 13, 1914, complainant wrote to the vice president of the Rutland that one of the cars furnished was not satisfactory, and that it was not suitable for shipping milk and was not such a car as was furnished other shippers. He replied, under date of October 14, that the Boston & Maine, under usual arrangements, furnished one car and the Rutland the other, and that he understood that the car furnished by the Rutland was satisfactory. On October 15, 1914, complainant requested the Boston & Maine to furnish a car similar to the one furnished by the Rutland. That carrier was informed that because of the distance from Vergennes to Boston it was necessary to have a good car to preserve the milk. Complainant was advised that she was shipping less than a carload; that the car furnished was properly equipped with steam heat and had space for refrigeration; and that cars of the largest capacity were already in service on runs that were loading them to capacity, and it was felt that they could not consistently be taken from such runs under the circumstances. On November 2, 1914, complainant advised the Boston & Maine that the car was absolutely unfit for the service. Boston & Maine car No. 1647 was assigned to complainant on December 19, 1914, and was used until November 7, 1915. This car originally was a baggage car but had been converted into a tool car and then into a milk car. It was single boarded and sheathed on both sides of the studding but was not insulated; the partition in the center was $3\frac{1}{2}$ inches thick. It contained six windows, which were boarded up with three-quarter inch boards. Some of the windows had openings three-eighths of an inch wide. The car was equipped with rolling doors, and the air entered at the bottom and sides of the doors. Cans containing milk became covered with dust and cinders. Car No. 1647 had been in the service of a competitor of complainant, who refused to continue its use because it was unfit for service. This competitor was given an insulated car in good condition in its place. The Boston & Maine had some cars suitable for transporting milk, but none of such cars had been furnished complainant. It is asserted by the Boston & Maine that car No. 1647 was furnished the complainant because of its large capacity, and, while not insulated, was probably as suitable as many other cars used by complainant's competitors, some of whom used car No. 1647 both before and since complainant used it; that the Boston & Maine attempted to distribute its milk equipment impartially, but under conditions existing at the time some cars were

assigned which were not satisfactory; and that complainant has not suffered in this respect more seriously than its competitors. It is to be remembered that complainant protested against the car furnished by the Boston & Maine before car No. 1647 was assigned to her.

Complainant had advised the Boston & Maine that cars remained at Bellows Falls from 8.25 p. m. until 3.10 a. m. awaiting transportation in a Boston & Maine train; that in the winter an uninsulated car loaded with milk standing for that length of time without heat would cause the milk to freeze; and that the circumstances and conditions under which complainant was forced to make her shipments demanded the best of equipment. Shipments made by complainant moved from Vergennes to Boston, a distance of 213 miles. The train which transported complainant's car from Bellows Falls was scheduled to arrive at Boston at 7 a. m. The car left Vergennes at 11.30 a. m. and arrived at Boston at 7 a. m. on the following day, the time consumed being 19 hours and 30 minutes, or an average speed of about 10 miles per hour. A car loaded with milk on the road for that length of time should be properly insulated and in other respects fully equipped. Complainant made frequent protests respecting the character of the cars furnished and requested that a satisfactory car be supplied. Other shippers from points on the Rutland to Boston were supplied at the same time with modern milk cars.

We find from the facts of record that the Boston & Maine and the Rutland unduly prejudiced complainant and unduly preferred her competitors in the matter of furnishing milk cars for shipments to Boston in violation of section 3 of the act, and that the Boston & Maine failed to furnish proper cars upon reasonable request in violation of section 1 of the act.

The Rutland has a contract with Stephen C. Millett to the effect that at his own cost and expense he is to construct and maintain creameries and their appurtenances and equipment on the line of the Rutland extending from Ogdensburg, N. Y., to Chatham, N. Y., exclusive of that part of the road between Rutland and Bellows Falls; that he is to use his best endeavor to establish, conduct, maintain, develop, increase, and generally facilitate the business of transportation of milk, cream, buttermilk, and pot cheese from points on said road to Chatham, and via connecting lines to points on the Harlem division of the New York Central & Hudson River Railroad south of Chatham to and including Melrose Junction, N. Y.; that he will properly ice all refrigerator cars employed in the transportation of milk or milk products in pursuance of the agreement; that he will be wholly responsible for the milk and milk products transported under the agreement; and that he will at all times indemnify and hold harmless the railroad company

against all claims that may arise or be made against the railroad company on account of the milk transportation business except such losses as may arise from accident or casualties to the trains upon which the milk is transported, or loss or claim occasioned by the negligence of the railroad company or its employees. The contract has many other provisions with respect to free transportation of ice, building material, laborers, etc., not involved in this proceeding. Millett receives for his services 15 per cent of the Rutland proportion of the gross joint revenue on milk moving to New York. The New York Central Railroad Company also pays him $12\frac{1}{2}$ per cent of its proportion of the gross joint revenue derived from shipments received from the Rutland.

It is admitted by the Rutland that pursuant to the agreement Millett constructed milk-receiving stations at various points between Vergennes and Rutland and that they were rented to New York dealers by Millett. Complainant asked that similar stations be erected for her use, but the Rutland did not comply with the request. Complainant had difficulty in holding farmers to their contracts as they found it more convenient to deliver milk to New York dealers at any time of day rather than to attempt to make deliveries at uncertain and irregular train arrivals. If carriers make contracts of the nature of the one the Rutland has with Millett, they do so under the legal obligation that their practices under them shall not unduly prejudice, or unduly prefer any shipper engaged in the same business. We are of opinion and find that the contract the Rutland made with Millett with respect to the building and maintenance by him of milk-shipping stations for use of shippers of milk to New York from Vergennes and other stations intermediate to Rutland, and its refusal to give complainant access to them under reasonable terms, or to construct similar buildings for her use on shipments to Boston unduly preferred shippers to New York and unduly prejudiced complainant, in violation of section 3 of the act. It appears, however, that at this time only one of the stations built by Millett south of Vergennes is owned by him. The station is at Salisbury, and is leased to a New York dealer at \$240 per annum. Other stations were sold by Millett to New York dealers before complainant began shipping milk.

The Rutland and Boston & Maine refused to extend credit to complainant on accruing freight bills, while at the same time they extended such credit to her competitors. It is alleged by complainant that this is unjustly discriminatory. When the carriers were approached with respect to the transportation of a car for complainant, negotiations were conducted in the name of the Graustein Company. They were advised that the car was to be operated by that company. The affairs of the Graustein Company were involved in the

bankruptcy proceedings of the Boston Condensed Milk Company. The latter company had been slow of payment, and prior to its bankruptcy had given bond to the Rutland for payment of freight charges. Certain charges were not paid and the bonding company was forced to pay about \$3,600. We find that the refusal to extend credit to complainant on accruing freight bills did not constitute undue discrimination within the meaning of the act.

Complainant alleges that her cars were held, on an average, three and one-half hours in the city of Boston by the Boston & Maine before being switched to her plant, while cars of her competitors were switched to their plants within two hours after their arrival, and that this constituted unjust discrimination. The evidence does not sustain the allegation as to the average delay of complainant's cars. While the record does show that it took from one and one-half to two hours to deliver complainant's cars after arrival, the delay arose largely from congested conditions in the Boston & Maine terminal, and the switching service rendered complainant was substantially the same as that rendered her competitors. We find that the complainant was not unjustly discriminated against in the matter of switching service.

Complainant alleges that she was subjected to unjust discrimination in various ways, including the following: That the Rutland furnished milk-loading platforms to competitors which were not furnished to complainant; that charges were based on the capacity of the containers, while the tariffs of the Maine Central governing shipments from points on that line contained no such provisions; that competitors were permitted to use Maine Central cars for storage purposes in Boston; that discrimination existed with respect to caretakers' passes, etc., all of which have been carefully considered. The evidence fails to sustain these allegations.

The defendants assert that the business of complainant was conducted by the Graustein Company until the latter part of October, and that arrangements for transportation of milk were made by W. A. Graustein, who stated he was acting for that company. They contend that complainant is not entitled to reparation. The fact that the business was conducted under the name of the Graustein Company is immaterial, as the record shows that it was owned and controlled by complainant.

The defendants also contend that complainant has assigned the claim to reparation to a bank, and for that reason none may properly be granted. The statute empowers us to award reparation to the party injured by any violations of the act committed by carriers. The fact that she may have assigned any part of the award is not a matter of which we may take cognizance. Defendants also refer to

the fact that the Boston Condensed Milk Company has assigned its claim to complainant. However this may be, the award should be entered in favor of the party injured, and any understanding or agreement with respect to the award after its grant by us is a matter with which we have no concern. In both cases the complainant and intervener were the shippers and paid and bore the freight charges, and are therefore entitled to any reparation that may be found to be due.

Defendants challenge the jurisdiction of the Commission to award damages growing out of inadequate service or facilities. We think the jurisdiction is clear where the injury and damages suffered by complainant are shown to be directly due to violations of the provisions of the act. Sections 8 and 9 of the act give to complainant a right of action for damages against the defendants, and confer the right of applying to this Commission for an order awarding damages. These sections provide that in case of a violation of any provision of the act resulting in damages the carriers shall be liable for such damages, and that the amount thereof may be determined in a proceeding before this Commission or by a suit in court. Principles laid down by the Supreme Court in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426, are to the effect that in cases such as the one before us this Commission is the only tribunal in which complaint can properly be filed. Shall the remedy be any the less effective because the cause must be laid only before us? We are clearly of the opinion that complainant had the right to bring her claim for damages here, and that the Commission has power to award reparation for such damages as the evidence shows that complainant sustained in consequence of violations of the provisions of the act. *Louisville & Nashville R. R. Co. v. Ohio Valley Tie Co.*, 242 U. S., 288.

In consequence of the violations of the act above found, we are of opinion and find that complainant was damaged in the sum of \$30,518.62; of which amount \$13,847.01 is due from the Boston & Maine Railroad, with interest at 6 per cent per annum from March 8, 1916, and \$16,671.61 from the Rutland Railroad Company, with interest at 6 per cent per annum from March 8, 1916.

Proof of shipments by the Boston Condensed Milk Company was not made at the hearing. The complaint of this company was filed February 17, 1916, therefore all shipments delivered prior to February 18, 1914, are barred under the limitation prescribed in the act. As before stated, this claim involves only discrimination as to the charges made for through shipments from points in Vermont to Boston. A statement covering the shipments on which reparation is claimed should be prepared and submitted to the Boston & Maine

for verification. The statement should show point of origin, date of shipment, car initials and number, route, weight or number of cans transported and the size thereof, date of delivery, charges collected, and charges collectible under the finding of the Commission. When the statement so submitted has been checked by the accounting officers of the Boston & Maine it should be forwarded to the Commission. On the receipt thereof the matter of an award of reparation to the Boston Condensed Milk Company will have further consideration.

During the years 1914 and 1915 complainant loaded ice in cars at Boston which was transported to Bellows Falls with empty milk cans. The Boston & Maine has presented bills for transporting the ice, which complainant has refused to pay. The complainant and the Boston & Maine submitted the question whether the schedules of the Boston & Maine provided for the free movement of ice from point of delivery of milk to starting point, or to points intermediate, to the Commission for determination. Complainant contends that under the schedules of the Boston & Maine ice could be transported with empty cans without charge in order to keep the cans cool. The contention of the Boston & Maine is that there was no tariff provision which permitted free transportation of ice.

Rule 2 of Boston & Maine I. C. C. No. 3793 was in effect from September 22, 1913, and is in part as follows:

Rates named herein include transportation of ice necessary to the proper refrigeration of the commodities shipped. They also include the privilege of loading or unloading at intermediate stations at which the train is scheduled to stop, and the return of empty receptacles and cases to points of original shipment, but they do not include icing, loading or unloading service.

In the same tariff on page 7 specific rates are named for transportation of ice in less-than-carload lots in milk cars between various points. The rate from Boston to Bellows Falls is there stated to be \$1 per ton.

We are of opinion that the schedules of the Boston & Maine did not at the time authorize the free transportation of ice in milk cars with returned empty milk containers.

An appropriate order will be entered in No. 7788.

45 I. C. C.

No. 9329.

HENRY H. SHEIP MANUFACTURING COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY.

Submitted May 26, 1917. Decided June 22, 1917.

Upon complaint alleging that defendant's charge for the storage of lumber at pier 40, Philadelphia, increased since 1910, is unreasonable; *Held*, That the defendant having justified the increased charge in question the complaint will be dismissed.

Claude W. Owen for complainant.

Francis R. Cross for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Among the defendant's facilities for the handling of freight at Philadelphia, Pa., is a station known as pier 40. This station has team tracks, a warehouse, and a storage yard, the latter being divided into spaces adapted to the storage of lumber.

Complainant alleges that the charges collected on lumber stored at this point, \$3 per month per carload, are unreasonable; that reasonable monthly charges would not exceed \$3 per unit of ground space occupied, regardless of the number of carloads stored thereon, or would not exceed \$2 per month for the first carload stored upon a given space and \$1 per month for each additional carload superimposed thereupon; and that it has been damaged by the collection of the charges assailed. Reparation is asked.

At pier 40 inbound lumber is received and unloaded from the car under the ordinary demurrage rules. If complainant does not desire to dray the lumber immediately it is stored there in certain spaces provided near the team tracks. There are 18 of these spaces each measuring about 12 feet wide by 16 feet long, none of which is inclosed or covered. For some years past it has been the practice of complainant not only to occupy all of these spaces, but to pile one carload of lumber upon another; the result being that frequently each space will have two, sometimes three, carloads piled upon it, all being the property of complainant. The lumber thus received at pier 40 is, so far as the carrier is concerned, at destination and does not move forward again. It is stored to await the convenience of complainant, not for reshipment.

For many years prior to December 15, 1914, the charge for this service was \$2 per carload; this charge was increased to \$3 on that date; and it is this increased charge which the complainant asserts is unreasonable and that the defendant, under the statute, must justify. The complainant regards and uses the storage space at pier 40 as an extra yard for its surplus, or reserve stock of chestnut lumber, a supply of about 500,000 feet being kept there constantly. The record shows that complainant allows carloads of this lumber to remain at this pier for periods of more than a year. At its manufactory, located in a thickly settled portion of the city of Philadelphia some distance from the pier in question, it maintains a supply of about 5,000,000 feet of lumber, mainly of kinds other than chestnut. Among the reasons given by it for not supplying additional storage space away from the carriers' terminal are the practical impossibility of increasing the storage capacity of its plant and the cost of additional handling which would be necessary if outlying yards were used.

The defendant assumed the burden of justifying the increased charge. One of its witnesses asserted that the charge should be made higher than it now is; that a higher charge would be an incentive to remove lumber from storage; and that with a low charge the consignee has no inducement speedily to release the space occupied. Some evidence was introduced tending to show that, based on the average total revenue derived from this source during the period of a year, the present charge does not yield an adequate return on the fair value of the property devoted to storage purposes. The record, and it is supported by tariffs on file, shows that the charge in question is the same as that made for lumber storage elsewhere in Philadelphia by defendant and by other rail carriers.

Lumber stored at pier 40 is at the carrier's risk as warehouseman, and in self-protection it must provide insurance based on the estimated value of the average stocks in store. The defendant also points out the saving to complainant in being able to secure storage at \$3 per carload per month by comparison with the regular demurrage charge of \$1 per day applicable in the past on freight traffic generally, the difference in complainant's favor being much greater at the present time by reason of the considerably higher scale of demurrage charges which has become effective. From the showing of record that during a considerable period of time it has occupied, to the practical exclusion of other receivers of lumber, all of the lumber storage space at the point in question it seems apparent that the use of this facility is of commercial advantage to the complainant, even under the present charge.

While it appears from the testimony that for about a year and a half prior to the time of hearing the complainant had practically monopolized the available lumber storage space at pier 40, the question of preferential treatment in the allotment of this space between such receivers of lumber as may desire to avail thereof has not been raised or presented in such manner as to afford a basis for determination by us in this proceeding, further than to point out the duty of the defendant under the law to deal with this matter in such way as to remove and avoid any cause for complaint of unjust discrimination.

Upon consideration of all the facts and circumstances here disclosed we are of the opinion and find that the defendant has justified the increased charge in issue. The complaint will therefore be dismissed.

No. 8949.

PORTLAND TRAFFIC & TRANSPORTATION ASSOCIATION
ET AL.

v.

OREGON-WASHINGTON RAILROAD & NAVIGATION
COMPANY ET AL.

Submitted December 2, 1916. Decided June 20, 1917.

Rate on culverts, set up, in carloads, from Portland, Oreg., to Rigby, Idaho, not shown to have been illegal or unreasonable. Complaint dismissed.

William C. McCulloch for complainants.

R. C. Fyfe for defendants and Western Classification Committee.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Portland Traffic & Transportation Association, a voluntary association organized to promote the shipping interests of the city of Portland, Oreg., and the Coast Culvert & Flume Company, a member of said association, engaged in the manufacture of sheet-iron culverts at Portland. By complaint, filed June 12, 1916, they allege that the rate charged by defendants on a carload of culverts, set up, shipped by the Coast Culvert & Flume Company, hereinafter called complainant, from Portland to Rigby, Idaho, in May, 1915, was illegal and unreasonable. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in amounts per 100 pounds.

The shipment, consisting of sheet-iron pipe culverts, set up, weighed 30,780 pounds, and moved over defendants' lines 782 miles. No commodity rate was in effect over the route of movement. When the shipment moved the western classification, which governed, rated iron or steel culverts, plate or sheet: set up, in carloads, minimum 20,000 pounds, subject to rule 6-B, fourth class; "taken apart lengthwise and three or more half sections nested, or upper half sections nested and flat bottoms in bundles, straight or mixed c. l., minimum weight 36,000 pounds," fifth class. Charges were collected in the sum of \$326.27, at the fourth-class rate of \$1.06. Complainant contends that the fifth-class rate of 86 cents was legally applicable, but that if the fourth-class rate was applicable, it was unreasonable to the extent that it exceeded the fifth-class rate.

With respect to the first contention it is sufficient to say that it is not supported by defendants' tariffs. The fifth-class rate applied only on culverts, knocked down, and not on culverts, set up. The rate charged was legally applicable.

With respect to the reasonableness of the rate charged, complainants insist that iron or steel culverts, set up, should not take a higher rate or rating than iron or steel culverts, knocked down. The present carload rating on culverts, set up, was considered and approved in *Klawer Mfg. Co. v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 508. The record in that case was comprehensive, and the evidence adduced in the case now before us does not warrant a different conclusion.

Complainants state that the per ton-mile earnings under the rate charged materially exceed the average earnings of all the carriers operating in the same general territory. Conceding this, it does not necessarily follow that the rate charged was unreasonable.

We find that the rate assailed is not shown to have been unreasonable, and an order dismissing the complaint will be entered.

MILK AND CREAM RATES TO NEW YORK CITY.

No. 8558.

MILK AND CREAM INVESTIGATION.

Submitted October 27, 1916. Decided June 21, 1917.

Rates for the interstate transportation of milk, cream, condensed milk, skim milk, buttermilk, and pot cheese, in carloads and less than carloads, to Weehawken, Hoboken, and Jersey City, N. J., and New York, N. Y., from points on lines of respondents found to be unreasonable and unduly prejudicial to producers and shippers of the articles named from near-by points and unduly preferential to producers and shippers of said articles from distant points, and reasonable and nonprejudicial basis of rates prescribed for the future.

Allen S. Olmsted, 2d, for New York Sanitary Milk Dealers Association.

Robert D. Jenks for Philadelphia Milk Exchange.

John F. Cusick for D. Whiting & Sons, C. Brigham Company, and Elm Farms Milk Company.

M. Carter Hall for H. P. Hood & Sons and Turner Center Dairying Association.

S. D. Rice for Merrill-Soule Company.

H. Ware Barnum, assistant attorney general for commonwealth of Massachusetts.

John C. Orcutt for Boston Chamber of Commerce.

George Albree for himself.

M. S. Hartman for Fairmont Creamery Company of New York.

Maurice T. Jones for Golden & Company.

G. A. Page for Borden's Condensed Milk Company.

Frank B. Pentlarge for Phoenix Cheese Company of New York.

Alger & Simpson for Sheffield Farms Slawson-Decker Company

Parker McCollester for New York Central Railroad Company, West Shore Railroad Company, and trunk line railroads.

M. B. Pierce and *T. H. Burgess* for Erie Railroad system.

C. L. Andrus for New York, Ontario & Western Railroad Company.

A. L. Langdon for Long Island Railroad Company.

Charles S. Pierce for Boston & Maine Railroad.

B. F. Dewey and *E. H. Burgess* for Lehigh Valley Railroad Company.

Douglas Swift for Delaware, Lackawanna & Western Railroad Company.

John J. Beattie for Lehigh & Hudson River Railroad Company.

J. W. Meridith for Central Railroad Company of New Jersey.

H. H. Fleming for Ulster & Delaware Railroad Company.

Henry Wolf Biklé for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

By order of January 11, 1916, the Commission instituted a general investigation with respect to interstate rates and charges on milk and cream; the relation of rates and charges on milk to those applicable on cream; and rules, regulations, and practices applicable to and in connection with rates and charges on milk and cream, published, demanded, or collected throughout the country by common carriers subject to the act. A number of formal complaints were consolidated with the general proceeding, and hearings were had in various parts of the country.

Rates, regulations, and practices applicable to and governing the transportation of milk and cream to various points in the state of New York and other states were subjects of investigation. For convenience and because of peculiar transportation conditions, the New York situation alone will be considered in this report. Some evidence was submitted respecting charges and regulation governing shipments of milk and cream to Syracuse and Rochester, N. Y., but shipments to these points are forwarded over intrastate routes. Rates maintained by the New York, Chicago & St. Louis Railroad Company on milk in carloads to Buffalo, N. Y., are attacked by the Fairmont Creamery Company in Docket No. 7484. This case will be disposed of in another report.

The rates on shipments of milk to New York City have previously been considered by this Commission. In *Howell v. N. Y., L. E. & W. R. R. Co.*, 2 I. C. C., 272, we had under consideration blanket rates on shipments to the New Jersey terminals. It was alleged that rates from points in Orange county, an average distance of about 60 miles, were unreasonable and unjustly discriminatory in comparison with rates from other and more distant points. We found that the inclusion of all milk-shipping points in one group had not been shown to be prejudicial to complainants. The question of the reasonableness of the rates was left for further consideration. In *Milk Producers' Protective Assn. v. D., L. & W. Ry. Co.*, 7 I. C. C., 92, we again considered blanket rates on shipments to Weehawken, Jersey City, and Hoboken, N. J., and New York, N. Y. It was alleged, among other things, that the blanket adjustment resulted in unreasonable and unjustly discriminatory charges to shippers from points comparatively near to the terminals. We found that the maintenance of such rates was in violation of sections 1 and 3 of the act, and required the establishment of four zones; the first to extend 40 miles from the terminals in New Jersey; the second, points over 40 and to and including 100 miles; the third, points over 100 and to and including 190 miles; and the fourth comprising all points more than 190 miles from the terminals. Rates on milk were pre-

scribed from points in the different zones. At that time the rate on cream was 18 cents higher per 40-quart can than the rate on a 40-quart can of milk, and no sufficient reason appeared to disturb that relationship. The result of the decision was the establishment by respondents of the following rates on milk and cream, in cents per 40-quart can, from the various zones to the Jersey City terminals:

Zones.	Milk.	Cream.
1 to 40 miles.....	23	41
41 to 100 miles.....	26	44
101 to 190 miles.....	29	47
191 and more miles.....	32	50

These rates were applicable to less-than-carload shipments and included icing by carriers.

To the adjustment certain modifications were made. In view of the heavy grades of the Ulster & Delaware Railroad, fourth zone rates were allowed from all points on that line more than 130 miles from the terminal. *Brockway v. Ulster & D. R. Co.*, 8 I. C. C., 21. It appeared that the New York, Susquehanna & Western delivered about 65 per cent of the interstate milk handled by it in New York City. In view of the extra service, we held that on shipments carried through Jersey City and delivered in New York City the carrier was entitled to charge a higher rate for the additional service. Rates and the grouping maintained by the New York, New Haven & Hartford, for reasons stated in the decision, were not disturbed.

The rates and grouping prescribed by the Commission are in effect at the present time, except that the rates were increased 5 per cent on February 23, 1915. The Erie Railroad Company ends its fourth zone 413 miles from the New Jersey terminals. The rate on milk now in effect from points on lines of that carrier more than 413 miles distant is 36.8 cents per 40-quart can. The New York, New Haven & Hartford does not maintain zone rates, but charges 26.3 cents per 40-quart can on milk from all points, 66 to 135 miles, unrefrigerated. The charge is 20 per cent more when the shipments are refrigerated, or 31.5 cents.

In *Milk Producers' Protective Association Case*, *supra*, the Commission fixed rates and grouping for the transportation of milk and cream to the New Jersey terminals only, except as to shipments delivered by the New York, Susquehanna & Western in New York City. At that time there was no milk traffic moving interstate into New York City via the New York Central lines. Shortly afterwards interstate traffic developed over certain lines of the New York Central system and connections, and the same rates and grouping were applied, and are now maintained, to such movements as were fixed by the Commission to the New Jersey terminals. The New York

Central established and now maintains rates on intrastate shipments of milk and cream to New York on the same basis as are maintained on interstate shipments, with certain exceptions not necessary to be considered here. There are also maintained by the Delaware & Hudson higher rates on intrastate traffic from certain points than those fixed by the Commission.

At the time of the decision in the *Milk Producers' Protective Association Case, supra*, the rate on milk in bottles in cases was four-fifths of a cent per quart, the same rate per quart as that applicable to milk in 40-quart cans. After the decision rates on milk in bottles were made one-fifth of a cent per quart higher than the rates on milk in 40-quart cans. In 1903 the carriers of milk to the New Jersey terminals and New York City established rates on milk in quart bottles in cases 140 per cent of the rates on milk in 40-quart cans; in pint bottles, 160 per cent; and in one-half pint bottles, 180 per cent, and this basis is now in effect.

As before stated, the rates above referred to apply on shipments in less than carloads. Prior to 1902 there were few carload rates on milk and cream to New York City. In that year rates were established on carload shipments, on the basis of 80 per cent of the rates on less than carloads, ice to be furnished by the shipper. With certain exceptions not necessary to set forth, these rates were increased in 1909 to 87½ per cent of the less-than-carload rates. The New York Central established and now maintains carload rates which are 90 per cent of its less-than-carload rates. The Central of New England, Delaware & Hudson, Erie, New York, Susquehanna & Western, New York Central, West Shore, New York, New Haven & Hartford, Rutland, and Ulster & Delaware now maintain carload rates on cream.

The same rates are in effect on milk, skim milk, buttermilk, and pot cheese, on the one hand, and on cream and condensed milk on the other. Except when otherwise stated, where the word "milk" is hereinafter used it will include skim milk, buttermilk, and pot cheese, and where the word "cream" is used it will include "condensed milk."

New York City secures the greater part of its milk from the eastern and central part of the state of New York, from points on and east of the line of the Pennsylvania Railroad Company extending from Sodus Point to Elmira, N. Y. Some is secured from western New York, northern Pennsylvania and New Jersey, Vermont, and western Massachusetts and Connecticut. All milk originating on the New York Central and on the West Shore west of Albany, N. Y., practically all on the Delaware & Hudson, the New York, Susquehanna & Western, and some on the Rutland and the Central New

England, aggregating about 30 per cent of the total amount, is transported over intrastate routes.

Milk and cream are transported to the New Jersey terminals and to New York City almost wholly in milk cars in milk trains. Some cars are hauled in passenger trains in pick-up service on branch lines. There is practically no movement in baggage cars except some cream by express, which is negligible in quantity. There is no movement in freight trains. The 40-quart can is the standard container on shipments to New York. There are some shipments in 20 and 46 quart cans and other sized containers, but these shipments are relatively unimportant. Rates on 40-quart cans, in less than carloads, are the basic rates in relation to which other rates have been made. We will so consider them in this report.

Milk is delivered for New York consumption by nine carriers. The places of delivery, and the amount of milk and cream, reduced to a 40-quart can basis, and the percentage of the total delivered by each carrier during the year 1915 are shown by the following table, which is taken from the Milk Reporter, a publication containing statistics respecting the milk business in New York City:

Carrier.	Delivering point.	Number of cans.	Percentage of total.
New York Central.....	Melrose Junction, Bronx; One hundred and thirtieth Street, Manhattan; Thirty-third Street, Manhattan.	6,700,934	33.3
West Shore.....	Weehawken, N. J.....	884,613	4.4
Total N. Y. C. lines.....		7,585,547	37.7
Erie.....	Jersey City, N. J.....	2,922,888	14.5
N. Y., S. & W.....	do.....	574,565	2.8
Total Erie lines.....		3,497,453	17.3
D., L. & W.....	Hoboken, N. J.....	3,176,246	15.8
N. Y., O. & W.....	Weehawken, N. J.....	2,511,754	12.5
Lehigh Valley.....	Jersey City, N. J.....	2,123,704	10.5
Pennsylvania.....	Jersey City, N. J.; Flatbush Avenue, Brooklyn.	471,458	2.3
N. Y., N. H. & H.....	Harlem River, Bronx.....	334,165	2.1
Total rail carriers.....		19,700,327	98.2
Other sources.....		365,000	1.8
Total.....		20,065,327	100.0

About 60 per cent of interstate shipments of milk and cream for consumption in New York City is delivered by respondents in New Jersey. Hereinafter where reference is made to shipments of milk and cream to New York City it will include shipments to the New Jersey terminals unless otherwise stated.

The larger part of the milk shipped to New York City originates on the lines of delivering carriers. Exceptions to the rule are as follows: The New York Central receives a trainload of about 11 cars per day from the Rutland at Chatham, N. Y., and two trainloads of about 9

cars each from the Delaware & Hudson, one at Troy and the other at Albany; the West Shore receives one trainload of about 6 cars per day from the Ulster & Delaware; milk originating on the Central New England is delivered by the New York, New Haven & Hartford, the New York Central, the New York, Ontario & Western, and the Erie; and shipments originating on the Lehigh & Hudson River are delivered by the Erie. There are other less important lines tributary to various delivering carriers.

The daily consumption in New York City is approximately 2,090,000 quarts of milk and 110,000 quarts of cream. About 80 per cent is transported in cans and the balance in bottles. About 25 per cent of the total is shipped in carloads. On the average 24 trains of about 10 cars each are required daily to transport the traffic.

About 20 years ago respondents Delaware, Lackawanna & Western, Lehigh Valley, and New York Central, the latter with respect to intra-state traffic only, entered into contracts with persons or corporations, known as milk agents, to develop milk traffic along their respective lines. The agents agreed to solicit milk and cream shipments from farmers; to build and maintain creameries, receiving stations, and ice houses; to supply ice and see that the milk was properly tendered to the carrier; to care for the milk during its transportation; and to take general supervision of the milk business. They received from 15 to 20 per cent of the gross receipts of the business they secured for the carrier. The creameries and other buildings erected by the agents were leased at nominal rentals to New York dealers, with an option of purchase. There are no such contracts now in effect, with respect to interstate traffic, except one with the Rutland and New York Central. All carriers transporting milk to the New Jersey terminals or New York City now have milk departments or bureaus under the charge of a superintendent, known as a milk agent.

Respondents Erie Railroad Company and the New York, Ontario & Western Railway Company built creameries and receiving stations and leased them to milk dealers at nominal rentals. Most of the receiving stations and creameries in the state of New York are now owned by New York shippers. Where this is not the case the rental charges are based on the value of the property.

The contract of the Rutland and New York Central, above referred to, was made in 1908 with one Stephen C. Millett, and will not expire until 1919. Under the terms of the contract Millett undertakes to educate farmers along the Rutland to the requirements of the New York City board of health; to stimulate milk production by farmers; to erect creameries and milk-receiving stations at his expense; to supervise the loading and delivery; ice less-than-carload shipments at his expense; to handle claims; and to take general charge of the milk traffic. In return for his services Millett receives

15 per cent of the gross revenue of the Rutland on milk and cream shipped to Melrose Junction, N. Y., and delivered to the New York Central at Chatham, N. Y.; and $12\frac{1}{2}$ per cent of the gross revenue of the New York Central on milk and cream received from the Rutland at Chatham. Under this contract the milk traffic on the Rutland has grown from nothing in 1908 to 11 cars per day at the present time. With but few unimportant exceptions all milk stations and creameries on the Rutland erected by Millett are now owned by New York milk shippers.

It has thus come about that a large proportion of milk and cream shipped to New York is received at stations owned by dealers. The respondents operate trains so as to deliver milk and cream in time for dealers to prepare shipments for morning delivery, the trains generally arriving between 9 p. m. and 1 a. m. Each carrier has one or more terminals for the use of its milk traffic. The Pennsylvania delivers milk at Jersey City and Brooklyn, N. Y., a higher charge being collected for deliveries to the latter point. At each of the terminals a force of men is specially employed to unload the milk and load the empty containers. With each milk train there are sufficient employees to load and ice the cars and unload empty containers.

The following table shows the number of 40-quart cans of milk and cream delivered at New York City, during representative years, and the percentage of increase or decrease as between the years 1898 and 1915:

Railroads.	1895	1898	1904	1910	1915	Comparisons of receipts with 1898 taken at 100 per cent.
Erie.....	1,534,866	1,665,590	2,022,618	2,413,376	2,922,888	175.49
New York Central (Harlem division).....	880,635	735,947	440,918	1,077,758	1,495,214	203.17
New York Central (long-haul traffic).....			2,119,524	3,957,038	5,205,720	(¹)
New York, Ontario & Western.....	1,270,937	1,508,622	2,112,367	2,328,353	2,511,754	166.49
Susquehanna.....	685,209	733,162	788,761	734,891	574,565	² 78.37
New York & Northern.....	222,670	166,600	80,193			
West Shore.....	472,598	820,668	767,595	804,752	884,613	107.80
New Haven.....	286,491	474,789	484,582	630,325	334,165	² 70.38
D., L. & W.....	1,897,135	2,093,389	2,057,583	2,777,636	3,176,246	151.73
Long Island.....	50,380	21,804				(²)
New Jersey Central.....	85,079	96,202	65,848			(²)
Lehigh Valley.....	172,726	390,896	861,555	1,560,457	2,123,704	543.29
Pennsylvania.....					471,458	(¹)
Homer Ramsdell Transportation Co.....	250,864	260,449	217,289	95,793		(²)
Other sources.....	217,450	219,000	219,600	255,500	365,000	166.67
Total.....	8,027,040	9,187,127	12,238,413	16,635,879	20,065,327	

¹ None in 1898.

² Decrease.

A study of the table in connection with the territories the different carriers serve shows that the increase has largely come from points in the last zone. The following table shows the greatest distances

that shipments were transported in 1897 and 1916 over the lines of the carriers named:

	Penn- sylvania.	Erie.	Lehigh Valley.	New York, Ontario & Western.	West Shore.	New York Central.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
1897.....		331	335	264	290	142
1916.....	503	448	401	325	339	453

In 1897 the larger part of milk and cream consumed in New York City was produced in the first and second zones, within 100 miles of New York City. At the present time much of the milk shipped to New York is transported more than 400 miles. During the first week in June and in December, 1915, shipments from points on the New York Central to New York City moved from the following zones: First zone, 1 to 40 miles, none; second zone, 41 to 100 miles, 6,336 quarts; third zone, 101 to 190 miles, 44,636 quarts; fourth zone, but not more than 325 miles from the terminals, 520,280 quarts; fourth zone, from points 325 to 400 miles distant, 153,482 quarts; and fourth zone, from points more than 400 miles distant, 786,158 quarts.

Shipments of milk and cream were not transported to New York City by the Pennsylvania Railroad Company prior to March, 1913. At the present time the Pennsylvania transports an average of nine cars of milk and cream per day from points in western New York and northern Pennsylvania to New York via Harrisburg and Philadelphia, Pa.

The New York Sanitary Milk Dealers' Association, composed of 32 dealers in the city of New York, who distribute about 60 per cent of the milk and cream sold at retail, complains that the rates on milk and cream from all points are unreasonable; that the rates on milk in carloads are unreasonable and unjustly discriminatory as compared with the rates on less than carloads; that rates on milk in bottles are unreasonable and discriminatory as compared with rates in cans; that rates on cream are unreasonable and discriminatory as compared with rates on milk; and that the regulations of respondents with respect to carload minima are unreasonable.

On argument, the New York dealers suggested the following as reasonable rates on less-than-carload shipments of milk to New York City, the rates on cream to be 25 per cent higher, ice to be furnished by the carrier.

Miles.	Per 40- quart can.	Miles.	Per 40- quart can.	Miles.	Per 40- quart can.	Miles.	Per 40- quart can.
	<i>Cents.</i>		<i>Cents.</i>		<i>Cents.</i>		<i>Cents.</i>
1-20	11.4	61-80	18	121-140	22.8	401-500	29
21-40	13.9	81-100	19.7	141-190	24	501-600	30
41-60	16.1	101-120	21.3	191-400	26		

The president of the New York Dairymen's Association, the secretary of a dairymen's league, representing 13,000 farmers in New York, New Jersey, Connecticut, and Massachusetts, and the master of the New York State Grange, testified that many farmers at points located near New York City had ceased shipping to that point because they were unable to make a profit; that if dealers paid a better price to the producers at near-by points, larger quantities would be secured; that the milk supply of New York could be secured in large measure from territory within 200 miles if transportation charges are properly aligned; that a large outer zone has a tendency to force milk production away from the city; that where dealers can secure milk at lower prices from remote points near-by producers can not compete; and that the present zone arrangement deprives near-by producers of the advantage of their location. A milk producer in Orange County complains that producers located in the second or 40 to 100 mile zone are discriminated against in favor of producers located at more distant points.

New York dealers assert that it is impossible for them to secure the milk supply of the city from points within 200 miles; that dairy farmers within that territory refuse to produce milk for New York consumption in the summer months when the demand is greatest; and that in the future the milk supply must come from even greater distances than at present.

Because of the volume of milk and cream traffic, its importance as an article of food, the regularity of the movement, the insignificant loss and damage claims, and its transportation in trainloads, the New York dealers contend that the rates to New York City are unreasonably high from all points. It is shown that except for short distances rates on other traffic to New York from points in the state of New York and other states include ferry charges from Jersey City. They contend that the fact that the rates on milk and cream do not include such charges should be considered in fixing the rates. It is not contended that there is anything unjust in providing for delivery of milk at the New Jersey terminals instead of floating it to New York, but they insist that the rates should include the ferry charges for transporting wagons and trucks to and from the New Jersey terminals. The charge for ferriage from the New Jersey terminals to points on Manhattan Island is generally 3 cents per 100 pounds. A 40-quart can of milk weighs about 112 pounds, and on basis of this weight the New York dealers assert that a ferriage charge of 3.3 cents per 40-quart can should be absorbed by the carriers of milk to the New Jersey terminals. It is shown by respondents that free lighterage is allowed on certain traffic to New York from New Jersey terminals to place shippers over roads whose terminals are on the New Jersey shore on an equal footing with shippers who can ship over roads

reaching Manhattan Island, and that on a limited number of articles free ferriage is allowed in lieu of lighterage. Rates on milk and cream are fixed with respect to New Jersey delivery. The zones fixed by the Commission were measured from the New Jersey terminals. Ferry service has always been distinct from the service included in the rates. The ferries are operated at night with greater frequency than would be the case were it not for the demands of the milk business. The mere fact that the New York Central has its milk terminals in New York City, that its zones are measured therefrom, and that the rates cover delivery in New York, does not justify a finding that the rates to the New Jersey terminals should include delivery in New York.

It is asserted by respondents that where free ferriage is allowed it is given only as a substitute for lighterage of freight in carloads; that milk is not lighterage freight; that the dealer must take delivery at night, whereas if it were lightered it would not reach New York until the next day; and that it can not be claimed, therefore, that milk and cream are entitled to ferriage in lieu of lighterage.

We are unable to find that the failure of respondents to make an allowance to New York milk dealers for ferriage of their trucks to and from Jersey City terminals is unreasonable.

Comparisons are made with the rates to Boston, Philadelphia, and to Chicago and other points in central freight association territory. The rates to Boston have been readjusted as a result of our decision in the *New England Milk Case*, 40 I. C. C., 699. The conditions surrounding transportation to Chicago are entirely different from those prevailing as to transportation to New York. The average distance on shipments to Chicago is less than 100 miles, and the rates are made on a mileage scale, with entirely different groupings. In central freight association territory, rates on milk and cream are based on mileage scales, with varying rates and regulations. The rates to Chicago and central freight association points generally do not include refrigeration. In making comparisons the rates have been adjusted; that is, 1.5 cents per can have been added to cover refrigeration on shipments to the other points, and 3.3 cents have been deducted from the New York rates because of ferriage charges. These comparisons fall short of establishing that rates to New York are unreasonable. The respondents make comparisons with some of the same rates to show that those to New York are on a relatively low basis.

The New York shippers ask that the present zone adjustment of rates to New York City on milk and cream be continued. They contend that the rates are too high from all points and ask that they be reduced from each zone.

We find from exhibits on file that the average weighted haul of milk to New York City on less than carloads and carloads is 240

miles, and that the average charge is 31.7 cents per can on less than carloads and 27.7 cents on carloads.

On this basis the average revenue per car-mile, loaded and empty movement, per ton-mile, including ice and cans, and per gross ton-mile, loaded and empty movement, received by respondents on their milk and cream traffic for the year ended June 30, 1915, was as follows:

	Per car-mile.	Per ton-mile.	Per gross ton-mile.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Less than carloads.....	33	2.35	0.463
Carloads.....	28.9	2.06	.404

Although the commodities are not comparable, so far as conditions of transportation are concerned, the yield from existing rates on green vegetables and apples for the same distance, loaded movement only, may be compared with the above, as follows:

	Per car-mile.	Per ton-mile.	Per gross ton-mile.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Green vegetables.....	15.75	1.57	0.563
Apples.....	15.80	1.32	.5275

To obtain the car-mile and gross ton-mile revenue shown in the above tables, the tariff minima were used, and the tare of the cars and the weight of the ice were estimated. We have given the less-than-carload earnings on milk for the reason that 80 per cent of shipments to New York move in less than carloads, and, so far as the record shows, the loading approximates the minimum for carloads.

The following table, submitted by respondents, shows the average per car-mile earnings, loaded and empty movement, computed from actual shipments received at the terminals of the carriers named on a given night:

	L. C. L.	C. L.
	<i>Cents.</i>	<i>Cents.</i>
Delaware, Lackawanna & Western.....	13.10	13.83
New York, Ontario & Western.....	17.9	17.1
Pennsylvania.....	10.6	6
Lehigh Valley.....	10.64	10.82
New York, Susquehanna & Western.....	19.2	26.5
Erie.....	18.5	33.8
New York Central:		
At Melrose Junction.....	11.24	12.59
At One hundred and thirtieth street.....	9.7	17.8
At Thirty-third street.....	12.27	16.09
Ulster & Delaware (West Shore).....	24	19.95
Wallkill Valley (West Shore).....	17.2	.....

Fourth zone rates are applied to traffic originating on the Ulster & Delaware, although the points of origin are in the third zone.

The following table shows the revenue per ton-mile, per car, and per car-mile on less-than-carload shipments of milk in 40-quart cans, based on the average distance from each zone, and on a loading of 250 40-quart cans, not including the weight of the car or ice:

Miles.	Average distance.	Rate per can.	Equivalent per 100 pounds.	Per ton-mile.	Per car.	Per car-mile, loaded.	Per car-mile, loaded and empty.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
41 to 100.....	70	27.3	24.1	6.89	\$68.25	97.5	48.7
101 to 190.....	145	30.5	27	3.72	76.25	52.6	26.2
191 to 450.....	320	33.6	30	1.87	84.00	26.2	13.1

From the facts of record we are unable to find that on the whole the rates now in effect are unreasonable. We do not find that the scale of rates proposed by New York dealers would be reasonable. While the rates in question do not, on the whole, yield more than reasonable revenue, it does not necessarily follow that the rates are on a reasonable basis.

In the *Milk Producers' Protective Association Case*, *supra*, at page 167, we said that—

The interests of all milk producers, whether located within 50 or 250 miles of New York City on any of the lines, in retaining the share of this traffic to which their nearer location would naturally entitle them, are plainly imperiled under a uniform rate for the transportation service. This milk territory when the *Howell Case* was decided was much less extensive than it is now, and what has since been done by carriers under the uniform rate system to add to the volume of their traffic, with little regard to its origin or the cost of service, would doubtless be continued in greater or less degree, if that system should be retained. As the service is now performed, the single rate for all distances is fair neither as between the carriers nor as between the differently situated producers.

The situation at the present time differs only in degree from that considered by the Commission in the case referred to. If an average rate of 31.7 cents per 40-quart can of milk is reasonable for a haul of 240 miles, can it justly be found reasonable for a haul of 450 miles? A rate of 31.7 cents for 240 miles, as compared with 27.3 cents for distances from 41 to 100 miles, and 30.5 cents for distances 101 to 190 miles, clearly shows that the rates from near-by points are out of line. It is equally clear that a rate of 33.6 cents for all distances beyond 191 miles operates to prefer shippers from the more distant points. It is an economic waste to haul milk for long-distances if it may be secured at shorter distances.

Since the Commission prescribed the present zones in 1897, shipments of milk have practically ceased from points within the first zone of 40 miles, and have greatly decreased from points in the next

two zones, 41 to 100 miles and 101 to 190 miles. The milk supply of New York City is now coming largely from points beyond 250 miles. The rate and zone adjustment encourages milk production in regions far removed from the city. The New York dealers have naturally secured milk from points where the price, the charges for transportation, and other conditions were favorable to them.

Another element has also been a potent factor in the decrease of milk shipments from points less than 190 miles from the city, and that is the adjustment of charges for transportation. The fact that milk may cost more and in other ways may be more difficult for dealers to secure from comparatively near-by points, is no justification for the carriers to maintain unduly preferential rates from distant points. Rates on all traffic should be relatively reasonable from all points. While the service with respect to milk and cream traffic is special in the matter of equipment, speed, safe carriage, prompt delivery, and refrigeration, when necessary, the service is regular and specified equipment and crews can be constantly employed with all the economy resulting from such conditions. *Milk Producers Protective Association Case*, page 167. In that case, page 168, we said that—

Whatever service beyond ordinary freight service may be necessary to provide transportation for the shorter distance milk is also required for milk from the longer distance points, and, to some extent, more of such extra service is needed by the latter. That the carriers may find it necessary to provide special train service on account of the volume of their business in a particular line of traffic, like milk, is no reason for greatly disproportionate rates on less distant milk, some of which, as on the Erie east of Port Jervis, or on the Ontario & Western south of Bloomingburgh, requires comparatively little or no icing, and much less fast service than is necessary to bring the long distance milk to the terminal at a suitable hour for delivery. It costs the carriers more to transport milk from the longer distance points of shipment; it costs *something* more to transport a car of milk for every additional mile it is hauled, both in fuel and wear on track and equipment, and sometimes something for additional labor.

The decision of the Commission which fixed the milk zones was promulgated in March, 1897, more than 19 years ago. Conditions have materially changed since that decision was rendered. There is a marked increase in the volume of shipments. The increase, however, is from much greater distances than the average of the haul in 1897. Shipments have decreased from practically all points within 190 miles of the terminals. The marked increase in the haul serves to make apparent the disparity in the rate adjustment, as between the near-by and remote points. Any adjustment of rates that results in the imposition of comparatively high rates for short distances, and comparatively low rates for long distances, takes from the producer within the short distance territory whatever advantage he is entitled to because of his proximity to the consuming market,

and gives a producer who has no such advantage of location access to the market on a basis of rates which unduly prefers him within the meaning of the act. The change in conditions should have indicated to the respondents the necessity of a change in the rates and zones. On the contrary, in their desire to secure long-haul traffic, they have induced shippers to secure milk from remote points, and by fast train service and improved facilities, certain respondents are hauling milk for nearly 500 miles at the same rate which they formerly secured for an average distance of not over 200 miles.

Under all the facts and circumstances shown of record we are of opinion and find that the present zone adjustment and the rates and charges applicable to shipments of milk in less than carloads unduly prefer producers and shippers of milk from distant points, and are unreasonable and unduly prejudice producers and shippers from near-by points.

It is contended by New York shippers that the rates on milk and cream in quart, pint, and half pint bottles packed in cases, which are now 140, 160, and 180 per cent, respectively, of the rates on the same quantity of milk and cream in 40-quart cans, are unreasonable in so far as they exceed 120, 125, and 130 per cent, respectively. As above stated, prior to 1897 the rates on milk, in bottles, were the same per quart as the rates on milk in cans. In the decision in the *Milk Producers' Protective Association Case*, page 169, we said that—

The facts indicate that the rates on milk in cans should be lower than those on bottle milk from all stations by at least one-fifth of a cent per quart, and if we were only dealing with the question of discrimination in favor of the bottle method, we should have little difficulty in ordering that difference to be made effective.

and on page 172 we said that—

Any reduction which may hereafter be made in the present rate of four-fifths of a cent a quart on bottle milk should be followed by corresponding change in the rate from each group on can milk, and any lowering of the rate on cream in bottles should also result in like change in can cream rates. Nothing here said is intended to preclude the carriers from increasing their rates on bottle milk and cream without changing the rate on the same article when shipped in 40-quart cans.

It is conceded by shippers that the cost of service to the carriers is greater when shipments are made in bottles than when shipped in cans, because the package is bulkier and heavier. It is also conceded that the weight of 40 quarts of milk in cases is about twice as much as the same quantity of milk in a can. They contend that the floor space occupied by a carload of milk in cans, and in cases, is about the same, and that the carload minima, if they correctly reflect the standard to which a shipper may load a car, are indicative of the proper relationship between can and bottle milk. It is asserted that the average minima on cans make the car loading

about 130 per cent of the bottle loading, suggesting that percentage as properly reflecting the cost of the service. Respondents weighed containers of milk, both loaded and empty, handled by them at their terminals. The results of the weighing tests with respect to the filled and empty containers without ice were in part as follows, as shown by exhibits on file:

	Average weight.		Average weight.
LEHIGH VALLEY.		DELAWARE, LACKAWANNA & WESTERN.	
40-quart can:	<i>Pounds.</i>	40-quart can:	<i>Pounds.</i>
Full.....	114	Full.....	111.5
Empty.....	28	Empty.....	26.2
12-quart case:		12-quart case:	
Full.....	74	Full.....	75.4
With empty bottles.....	45	With empty bottles.....	42.4
24-pint case:		24-pint case:	
Full.....	78	Full.....	80.2
With empty bottles.....	52	With empty bottles.....	50
20-pint case:		20-pint case:	
Full.....	60	Full.....	56.5
With empty bottles.....	35	With empty bottles.....	34
ERIE.		24 half-pint case:	
40-quart can:		Full.....	52
Full.....	108-115	With empty bottles.....	34
Empty.....	22- 29	NEW YORK, ONTARIO & WESTERN.	
12-quart case:		40-quart can:	
Full.....	65- 71	Full.....	113
With empty bottles.....	41- 44	Empty.....	27
20-pint case:		12-quart case:	
Full.....	63- 69	Full.....	72
With empty bottles.....	43- 47	With empty bottles.....	42
24-pint case:		24-pint case:	
Full.....	69- 75	Full.....	72
With empty bottles.....	46- 50	With empty bottles.....	48
24 half-pint case:		20-pint case:	
Full.....	51- 55	Full.....	57
With empty bottles.....	36- 40	With empty bottles.....	36

The respondents contend that there is ample justification for higher rates on milk in bottles than on milk in cans, and that the spread now in effect does not compensate them for handling the excess weight represented by shipments of milk in bottles. They assert that the average minimum applicable to shipments in 40-quart cans is 10,000 quarts and in bottles 7,000 quarts. The revenue derived from the transportation of a minimum carload of milk in bottles is on the average slightly less than the revenue on 40-quart cans. For example, the carload rate from points in the third zone is 30.2 cents per 40-quart can and 12.7 cents per 12-quart case of bottles. The revenue from a minimum carload of 250 forty-quart cans is \$75.50, and from a minimum carload of 583 twelve-quart cases of bottled milk is \$74.17. The carriers are required to transport almost twice the weight in the case of the latter shipment. The average weight of a 40-quart can of milk is approximately 113 pounds. The minimum carload of 250 forty-quart cans weighs on the average 28,250 pounds. A 12-quart case of bottled milk averages about 75 pounds in weight. A minimum carload of 583 cases weighs on the av-

erage 43,725 pounds. The gross weight of 40 quarts of milk in quart bottles in a case is over 200 per cent of the gross weight of a 40-quart can of milk. The average weight of a 40-quart can is 28 pounds. The average weight of a 12-quart case is about 44 pounds. A minimum carload of 250 cans weighs 7,000 pounds and a minimum carload of 583 cases weighs 25,652 pounds. The expense of loading and unloading less than carload shipments of bottled milk is greater than in the case of milk in cans. No evidence was submitted in the record to show that the charges now in effect for milk or cream in bottles are unreasonable. It is shown that in recent years there has been a decrease of shipments in bottles, and it is asserted by some New York dealers that this is due in part to the difference in charges for transportation.

For comparative purposes we have used the weight of a case containing quart bottles. The weights of 40 quarts of milk in pint and one-half pint bottles are much heavier than the weight of 40 quarts in quart bottles. It is conceded by New York dealers that a higher charge is justified for bottle milk in pints and half-pint bottles than in quart bottles. We are unable to find that the present relationship between the rates on shipments in bottles and in cans is unreasonable.

The rates on cream are about 18 cents per 40-quart can higher than rates on milk. This results in a variation in the percentage relationship between the rates on milk and cream in the different zones from about 51 to 80 per cent, the average being about 70 per cent. The New York shippers admit that the rates on cream should be higher than those rates on milk. The respondents contend that there is no necessary relation between rates on milk and cream; that they are distinct commodities with different rate-making characteristics; and that rates on milk must be kept low as a matter of public necessity. It is insisted that rates on milk and cream must be considered by themselves and that under all the circumstances the rates now in effect are justified.

The New York shippers contend that rates on cream should be a percentage of the rates on milk, rather than an arbitrary above the milk rates. Certain shippers of cream asked that the rates on that commodity be made no higher than the rates contemporaneously maintained on milk. Both milk and cream are shipped in the same kind of containers, move in the same cars and in the same trains, and are alike susceptible to deterioration in transit in the event of improper handling. Loss and damage claims are negligible on both commodities. The average value of cream is about six times the value of milk. The rates on cream should bear some relation to the rates on milk. *New England Milk Case*, page 719. The volume of cream traffic is much less than that of milk, about 5 per cent of the

total shipments to New York consisting of cream. Cream is a higher grade commodity and the rates should be higher. In the *New England Case* we prescribed rates on cream not more than 25 per cent higher than on milk. In central freight association territory generally rates on cream are 25 per cent higher than rates on milk. The difference in value is no justification for maintenance of rates on cream about 70 per cent higher than those on milk. We find that the rates on cream in less than carloads and carloads should not exceed the maximum rates on milk herein prescribed by more than 25 per cent.

New York shippers complain that the rates on milk and cream in carloads are unreasonable in so far as they exceed 75 per cent of the rates on milk and cream in less than carloads. The present rates are 80, 87½, or 90 per cent of the less-than-carload rates. Milk and cream are naturally less-than-carload commodities, as the can is the unit of shipment. A farmer rarely produces a carload of milk, the daily shipments ranging from 3 to 10 cans. In the *New England Case*, page 736, we found that the rates on carload shipments from one consignor to one consignee, from one point of origin to one destination, ice to be supplied by the shipper, should not exceed 87½ per cent of the rates prescribed for less-than-carload shipments. We find that the rates on similar shipments to New York should not exceed 87½ per cent of the rates on less-than-carload shipments. As before stated all of the respondents do not maintain carload rates on cream. All respondents should maintain carload rates on cream on the basis herein prescribed on milk.

Complaint is also made of the minima provided for carload shipments by the various defendants, which are as follows:

	In cans.	In bottles.
	<i>Quarts.</i>	<i>Quarts.</i>
New York, New Haven & Hartford.....	(1)	5,000
Pennsylvania.....	8,000	6,000
Ulster & Delaware.....	9,000	6,000
Central of New England.....	9,000	7,000
Erie.....		
New York, Susquehanna & Western.....		
Delaware & Hudson.....	10,000	7,000
New York Central.....		
Rutland.....		
Lehigh Valley.....	10,000	7,200
Delaware, Lackawanna & Western.....		
New York, Ontario & Western.....		7,000

¹No carload rate.

There is but little evidence in the record respecting this question. It does not appear that shippers can not load to the prescribed minima, or that they otherwise work an injustice to any shipper. The respondents operate cars with varying capacities, and apparently the minima are prescribed with respect to the cars used by each

carrier. On this record, however, we have nothing before us to warrant any change.

The respondents contend that the zone adjustment now in effect is proper, largely because the zone basis has always been maintained; that receivers and producers have adapted their methods of purchase and sale with reference to such a basis; that creameries and milk-receiving stations have been located with reference thereto, and that to destroy the zone basis at once would seriously affect the business of shippers. It is admitted that theoretically a mileage scale of rates with narrow groups is proper, but they assert that the adoption of such a basis would be unwise at this time. So far as the respondents are concerned the establishment of a mileage scale would not interfere to any appreciable extent with existing train operation or schedules. Dealers have been encouraged by the respondents to secure milk at distant points, and the present zone adjustment has induced and fostered the production of milk for New York consumption at such points. If the adjustment is unlawful for any reason, the fact that dealers have made investments upon the supposition that the adjustment would be continued is by no means controlling. The New York dealers are entitled to reasonable charges, which means that the charges must be no higher than reasonable from all points. A basis which imposes comparatively high rates for short distances and comparatively low rates for long distances can not be sustained on the ground that the business had developed thereunder and has become adjusted thereto.

We have found that as a whole the revenue derived from the present rates on milk and cream is not unreasonable. Therefore, in prescribing rates for the future it will be necessary to order the establishment of rates which will remove the unlawfulness found to exist, and which will not impose unduly high transportation charges on shippers, producers, or consumers, and will conserve and maintain, so far as possible, the revenues of the carriers. In the *New England Milk Case*, we prescribed distance rates, based on blocks of 20 miles. Fewer stops are required to secure a carload of milk consigned to New York than to Boston. Therefore rates to New York will be based on blocks of 10 miles.

In the *Milk Producers' Protective Association Case* the group arrangement was not prescribed from all points on the Ulster & Delaware. In that case, page 172, we said that—

This line passes by difficult grades over the Catskill Mountains, and all its milk is gathered beyond the mountains between Bloomville, N. Y., its terminus, 175 miles from Weehawken, and a point on its line at or near Fleischmann's, N. Y., 132 miles from Weehawken. The present rates on milk and cream over this line from the territory mentioned do not appear to be unreasonable or otherwise unlawful, under the circumstances. This road connects with the West Shore at Kingston, which is about 88 miles from Weehawken. The second or 60-mile group runs out 100 miles from that terminal, and for the Ulster & Delaware, we think the third group from the terminal should end at about 130 miles on that road from Weehawken, and the remainder of

its mileage, about 50 miles, should constitute its fourth group, from which 32 and 50 cent rates on can milk and cream are not deemed unreasonable.

On complaint that the Commission erred in authorizing fourth group rates from points on the Ulster & Delaware, this finding was affirmed. *Brockway v. U. & D. R. Co.*, 8 I. C. C., 21.

The evidence in this case shows that conditions have not changed on the Ulster & Delaware. There has been no substantial change in the amount of milk and cream handled since 1897. We find also from the annual report that during the fiscal year 1915, it failed to earn on all traffic sufficient to pay its operating expenses and fixed charges. Under the circumstances we are of opinion that the Ulster & Delaware and its connections may charge rates 15 per cent higher than those herein prescribed, on shipments of milk and cream to Weehawken, N. J., from points on its line more than 130 miles from that point.

Upon the facts of record, we find that the rates for the interstate transportation, jointly and severally, on less-than-carload shipments of milk, skim milk, buttermilk, and pot cheese, in milk or refrigerator cars, in milk or passenger trains, iced when necessary, including the return of the empty containers, from points on respondents' line, with the exception of points on the Ulster & Delaware Railroad Company more than 130 miles from Weehawken, to New York City, Jersey City, Hoboken, and Weehawken, should not exceed the following, and from points on the Ulster & Delaware Railroad Company more than 130 miles from Weehawken to the same points, should not exceed the rate set forth below by more than 15 per cent:

Miles.	Per 40-quart can.	Miles.	Per 40-quart can.
	<i>Cents.</i>		<i>Cents.</i>
10 or under.....	15.5	Over 320 but not over 330.....	36.5
Over 10 but not over 20.....	16.5	Over 330 but not over 340.....	37
Over 20 but not over 30.....	17.5	Over 340 but not over 350.....	37.5
Over 30 but not over 40.....	18.5	Over 350 but not over 360.....	37.9
Over 40 but not over 50.....	19.4	Over 360 but not over 370.....	38.3
Over 50 but not over 60.....	20.3	Over 370 but not over 380.....	38.8
Over 60 but not over 70.....	21.1	Over 380 but not over 390.....	39.2
Over 70 but not over 80.....	21.9	Over 390 but not over 400.....	39.6
Over 80 but not over 90.....	22.7	Over 400 but not over 410.....	40.1
Over 90 but not over 100.....	23.4	Over 410 but not over 420.....	40.5
Over 100 but not over 110.....	24.1	Over 420 but not over 430.....	40.9
Over 110 but not over 120.....	24.8	Over 430 but not over 440.....	41.3
Over 120 but not over 130.....	25.5	Over 440 but not over 450.....	41.7
Over 130 but not over 140.....	26.2	Over 450 but not over 460.....	42.1
Over 140 but not over 150.....	26.8	Over 460 but not over 470.....	42.5
Over 150 but not over 160.....	27.4	Over 470 but not over 480.....	42.9
Over 160 but not over 170.....	28	Over 480 but not over 490.....	43.3
Over 170 but not over 180.....	28.6	Over 490 but not over 500.....	43.7
Over 180 but not over 190.....	29.2	Over 500 but not over 510.....	44.1
Over 190 but not over 200.....	29.8	Over 510 but not over 520.....	44.5
Over 200 but not over 210.....	30.4	Over 520 but not over 530.....	44.9
Over 210 but not over 220.....	31	Over 530 but not over 540.....	45.3
Over 220 but not over 230.....	31.5	Over 540 but not over 550.....	45.7
Over 230 but not over 240.....	32	Over 550 but not over 560.....	46
Over 240 but not over 250.....	32.5	Over 560 but not over 570.....	46.4
Over 250 but not over 260.....	33	Over 570 but not over 580.....	46.8
Over 260 but not over 270.....	33.5	Over 580 but not over 590.....	47.1
Over 270 but not over 280.....	34	Over 590 but not over 600.....	47.5
Over 280 but not over 290.....	34.5	Over 600 but not over 610.....	47.9
Over 290 but not over 300.....	35	Over 610 but not over 620.....	48.2
Over 300 but not over 310.....	35.5	Over 620 but not over 630.....	48.5
Over 310 but not over 320.....	36		

Certain respondents maintain rates on milk and cream in 20-quart cans which are one-half of the rates on shipments in 40-quart cans, and the rates on shipments in other containers are also based on the capacity.

We find that the rates on these commodities when shipped in the containers set forth below should not exceed the following percentages of the rates hereinabove found to be reasonable on shipments in 40-quart cans:

	Per cent.		Per cent.
20-quart cans.....	56	30-quart cans.....	79
23-quart cans.....	63	32-quart cans.....	84
24-quart cans.....	65	46-quart cans.....	113
28-quart cans.....	74		

We further find from the evidence that carload rates should be established by the respondents on shipments of milk, skim milk, buttermilk, pot cheese, cream, and condensed milk, where shipments are forwarded from one consignor to one consignee, from one point of origin to one point of destination, and that such rates should not be more than 87½ per cent of the rates hereinabove prescribed than carload shipments, ice to be furnished by shippers, said rates to include the return of the empty containers.

We are of opinion that provision should be made for mixed shipments of the above commodities in carloads; the rates to be made on the basis of the per can rates for each commodity in carloads, subject to the minimum provided for milk.

The rates above found reasonable are applicable to shipments to the New Jersey and New York terminals of the various respondents. The Pennsylvania transports shipments consigned to Brooklyn, N. Y., and charges to that point are approximately 6 cents per 40-quart can higher than to Jersey City. Shipments to that point are forwarded through the tunnels under the Hudson and East rivers, and are delivered by the Long Island Railroad Company. We are of opinion that the additional charges for delivering shipments of milk and cream at that point have not been shown to be unreasonable.

The Lehigh Valley operates a milk train from Canastota, N. Y., to New York, a distance of 382 miles. The New York Central reaches that point, and the distance via its line is 269 miles. The Lackawanna operates a milk train from Utica, N. Y., a distance of 288 miles; the distance via the New York Central is 237 miles. The Pennsylvania hauls milk from certain points on its Elmira and Buffalo divisions via a route much longer than those via the Lehigh Valley, Lackawanna, and Erie. Where circuitous lines desire to meet the rates based upon the distances from competitive points over the direct routes, and to maintain higher rates from intermediate

points, applications for relief from the provisions of the fourth section of the act should be filed.

On argument a manufacturer of condensed skimmed milk asked that rates on this commodity be made the same as the rates on milk. He asserted that the value of condensed skimmed milk does not exceed that of milk, and for that reason should take no higher rates. We are not advised as to the volume of movement or other transportation conditions surrounding the transportation of this commodity, and therefore would not be justified in prescribing the rates asked.

An order will be issued in accordance with the findings herein.

No. 8870.

CHAMBER OF COMMERCE OF THE CITY OF
MILWAUKEE

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Decided June 21, 1917.

Previous report and order of the Commission in this case modified upon stipulated statement of facts.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

In our original report in this case, 43 I. C. C., 725, we found that the defendant's practice of absorbing the charges of the Chicago & North Western Railway Company for switching from defendant's terminals to the docks of the Great Lakes Transit Corporation at Milwaukee on grain accorded transit at interior Wisconsin points and forwarded east via Milwaukee and the lake-and-rail lines, while refusing to absorb such switching charges on traffic accorded transit at Milwaukee, subjected millers at Milwaukee to undue prejudice and disadvantage. An order was entered accordingly.

It appears from a stipulated statement of facts later filed that the switching is performed by defendant and the finding and order therefore should be modified accordingly. We find that defendant's practice of making free delivery to the Great Lakes Transit Corporation at Milwaukee of grain accorded transit at interior points and its refusal to do so on that accorded transit at Milwaukee results in undue prejudice to millers at Milwaukee, which must be removed.

No. 8187.¹

NEPHI PLASTER & MANUFACTURING COMPANY

v.

DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted February 18, 1916. Decided June 21, 1917.

1. Rates on gypsum plaster in carloads from Gypsum, Utah, to Pocatello, Idaho, and Butte, Mont., found to be unduly prejudicial to complainant for the reason and to the extent that lower rates on the same commodity are maintained from Gypsum, Oreg., to the same destinations.
2. Rates to Portland, Oreg., found justified.

W. S. McCarthy, H. W. Prickett, and W. L. Ellerbeck for complainant.

J. V. Lyle, A. S. Halsted, E. N. Clark, and H. A. Scandrett for defendants.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

The complaints in these cases attack the rates charged for the transportation of gypsum plaster in carloads from Gypsum, Utah, to Portland, Oreg., Pocatello, Idaho, and Butte, Mont., as unreasonable and unjustly discriminatory in violation of sections 1, 2, and 3 of the act.

Gypsum is on the San Pete Valley branch of the Denver & Rio Grande Railroad, hereinafter called the Rio Grande, 1.9 miles east of Nephi, Utah, a point common to that line and the San Pedro, Los Angeles & Salt Lake Railroad, hereinafter called the Salt Lake route. The traffic in question moves from Nephi to Salt Lake City, Utah, via the Salt Lake route and is there turned over to the Oregon Short Line Railroad, hereinafter called the Short Line, which extends from Salt Lake City through Pocatello to Butte on the north and to Huntington, Oreg., on the west, at which latter point shipments destined to Portland are turned over to and delivered by the Oregon-Washington Railroad & Navigation Company, hereinafter called the Oregon-Washington. Gypsum, Oreg., is 7 miles from Huntington on a branch of the Short Line running northeast from the latter point. The rate to Portland is alleged to be unreasonable as compared with rates on the same commodity between various other points, and unjustly discriminatory as compared with rates to Portland from

¹ The report also embraces No. 8187 (Sub-No. 1), *Same v. Butte, Anaconda & Pacific Railway Company et al.*, and No. 8187 (Sub-No. 2), *Same v. Denver & Rio Grande Railroad Company et al.*

Arden, Mound House, and Reno, Nev., and Gypsum, Oreg.; and the rates to Pocatello and Butte as compared with the rates to the same points from Gypsum, Oreg.

TO PORTLAND.

The present through rate from Nephi to Portland, 986 miles, is 25 cents per 100 pounds, minimum 80,000 pounds, to which is added a charge of 1 cent per 100 pounds for the haul from Gypsum to Nephi. This rate has been in effect for some years, save for a period of about five months in 1913, when a rate of 22½ cents applied.

Various exhibits were submitted by complainant, showing how the rate complained of compares with rates maintained between other points, and the ton-mile and car-mile earnings thereunder. Complainant's chief cause of complaint arises from the fact that it is unable to compete in the Portland market under the present rate adjustment with producers of plaster at Nevada points, from which this commodity is shipped by rail to California points and transshipped thence to Portland by water.

From Mound House and Reno to San Francisco, Cal., and from Arden to East San Pedro, Cal., rates of \$2 a ton are maintained on traffic destined for beyond via a water carrier. From San Francisco and San Pedro the water rates to Portland range from \$1.25 to \$1.75 a ton. In order in a measure to meet this competition complainant asks that a rate of 20 cents, minimum 80,000 pounds, be established from Gypsum to Portland.

Defendants deny that the rate complained of is unreasonable or discriminatory, and argue that it is less than would be charged were it not for water competition at Portland. Their principal witness stated at the hearing that the carriers would prefer to withdraw from participation in the traffic at a rate less than \$5 a ton from Nephi to Portland "even though it had the result of encouraging the movement of the Mound House (Nev.) plaster by way of San Francisco and thence by way of boat to Portland."

While a carrier, in the exercise of its discretion, may establish rates to meet water competition, it is well settled that it can not be compelled to do so, so long as no unjust discrimination or undue preference is thereby created. *Lindsay Bros. v. B. & O. S. W. R. R. Co.*, 16 I. C. C., 6; *Harbor City Wholesale Co. v. S. P. Co.*, 19 I. C. C., 323, 329; *Audley Hill & Co. v. Southern Ry. Co.*, 20 I. C. C., 225, 226. Defendants do not participate in rates from the Nevada points, and therefore could not be charged with discrimination.

From the facts of record we find that the Portland rate has been justified.

TO POCATELLO AND BUTTE.

The following table, compiled from complainant's exhibits, compares the rates and distances to Pocatello and Butte from Gypsum, Utah, with the respective rates and distances to the same points from Gypsum, Oreg., at which point is located a cement plant, with which complainant is in direct competition:

From—	To Butte.				To Pocatello.			
	Dis- tance.	Rate per 100 pounds.	Ton-mile earnings.	Car-mile earnings.	Dis- tance.	Rate per 100 pounds.	Ton-mile earnings.	Car-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Gypsum, Utah.....	522	¹ 26 ² 23.5	9.96 10.92	29.89 21.84	260	¹ 21 ² 23.5	16.15 18.08	48.46 36.15
Gypsum, Oreg.....	592	³ 20 ³ 27.5	6.76 8.45 9.29	27.03 25.34 18.58	330	³ 20 ¹ 22.5	12.12 13.63	48.48 40.9

¹ Minimum weight, 60,000 pounds.

² Minimum weight, 40,000 pounds.

³ Minimum weight, 80,000 pounds.

Although various other comparative rates were cited by complainant, they are of little value in determining the reasonableness of the rates here concerned. There is left, therefore, for consideration merely the alleged discriminatory adjustment brought about by the maintenance of lower rates to the points of destination involved from Gypsum, Oreg., than for the shorter distance from Gypsum, Utah. In justification of this situation defendants contend that the movement from the Utah plant involves a three-line haul as against a one-line haul from the Oregon plant; that the Butte rate is abnormally low and was compelled by competition created by a producer of plaster at Great Falls, Mont., a point 170 miles distant from Butte; and that under the Commission's Fourth Section Order No. 4180 no higher rate can be maintained at Pocatello, an intermediate point. It does not appear that operating conditions surrounding the movements from the two originating points in question are materially different. Shipments from either Gypsum, Oreg., or Gypsum, Utah, to Butte pass through Pocatello and move over the same route beyond that point.

The only material difference in the movement to Pocatello lies in the fact that more than one line engages in the haul from the Utah plant, while the entire haul from the Oregon plant is over one line. Although three lines are involved in the haul from the Utah plant, but two participate in the line haul, the third performing merely a switching service. On the other hand, the Utah plant is 70 miles nearer the destinations concerned than is the Oregon plant.

Upon consideration of all the facts of record we are of opinion, and find, that the present difference in rates on plaster from Gypsum, Oreg., to Pocatello and Butte as compared with the rates to the same points from Gypsum, Utah, accords shippers at Gypsum, Oreg., and their traffic an undue preference and advantage over complainant and its traffic. We further find that the rates on plaster from Gypsum, Utah, to Pocatello and Butte are unduly prejudicial to complainant to the extent that they exceed the rates contemporaneously maintained from Gypsum, Oreg.

An appropriate order will be entered.

No. 8815.

ARIZONA CORPORATION COMMISSION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted April 13, 1917. Decided June 21, 1917.

On complaint that one-way first-class and one-way second-class passenger fares from points on and east of the Missouri River and elsewhere to points in the state of Arizona are unjust and unreasonable; *Held*, That the fares are not shown to be unjust or unreasonable. Complaint dismissed.

F. A. Jones, A. A. Betts, and R. W. Kramer for complainant.

S. T. Bledsoe, E. W. Camp, L. H. Chalmers, J. C. Forest, G. P. Bullard, John Franklin, and C. W. Durbrow for defendants.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

In this proceeding the Arizona Corporation Commission alleges that the one-way first-class and the one-way second-class passenger fares from points of origin named in tariffs listed in the complaint to destinations in Arizona are unjust and unreasonable. The tariffs provide passenger fares to the principal cities and other destinations in Arizona from Chicago, Ill.; Memphis, Tenn.; St. Louis, Kansas City, and St. Joseph, Mo.; St. Paul and Minneapolis, Minn.; Council Bluffs and Sioux City, Iowa; Atchison and Leavenworth, Kans.; the principal cities in the state of Louisiana; Albuquerque, Deming, and Tucumcari, N. Mex.; and stations in California, Nevada, and Utah. The evidence of complainant, however, was not as broad

in scope as the allegations of the complaint and the illustrative fares submitted in evidence by it were those from Chicago, St. Louis, Memphis, and New Orleans.

The complaint in this proceeding also contains a statement that in *Western Passenger Fares*, 37 I. C. C., 1, we stated in effect that fares from eastern points of origin to points in Arizona, New Mexico, and other western states were not justified where higher than certain bases therein established and declared to be reasonable. It is alleged that the fares exacted by defendants to destinations in Arizona are higher than the bases prescribed in that case and to that extent are unjust and unreasonable.

The defendants deny that the fares to Arizona are unjust or unreasonable. They also deny that our report in *Western Passenger Fares* had the effect of condemning the basis upon which interstate fares to Arizona are constructed; or that it required the fares to be reduced to a basis of 3 cents per mile.

In *Western Passenger Fares* it was shown that "in some of the western states, notably Nevada and Arizona, the general basis of interstate fares is 4 cents per mile." It was also shown that fares are built up from Chicago westward, using various bases for their construction until a point is reached about 30 miles west of the California state line, where the fare is the same as to San Francisco. The remainder of the stations in California on the main lines to San Francisco take the San Francisco fare. Representatives of New Mexico and Arizona in that proceeding urged that this method resulted in unreasonable fares to points in those states as compared with the fares to California points. The tariffs suspended in *Western Passenger Fares* contained increased fares from points in the states of Illinois, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, and Missouri to some points in New Mexico and Arizona, but no increases were proposed to points in the state of California. We stated in that case, at page 32:

We have no evidence in this record which justifies any increase in fares to these far western states where such increases will result in higher fares than will be obtained by using such bases as may herein be found reasonable within the territory principally affected by these increases and a basis of 3 cents per mile in territory west thereof.

In compliance with this ruling the respondent carriers canceled the proposed increased fares wherever they exceeded the basis prescribed and effected increases in existing fares only to the extent permitted. Increased fares applicable to Cheyenne, Wyo., Ogden and Salt Lake City, Utah, and intermediate points in those states and in Colorado were published. The fares to Arizona points in existence at the time the decision in *Western Passenger Fares* was rendered, as well as the fares now in effect, are higher than those arrived at in accordance with the bases therein outlined. This is also true with respect to

fares applicable to points beyond Ogden, such as Reno, Nev., and Truckee, Cal. For example, in the *Western Passenger Fares* case it was proposed to increase the fare from Kansas City to Williams, Ariz., a distance of 1,270 miles, from \$40.05 to \$44.40, or to 3.5 cents per mile. Since then, on April 15, 1916, the fare from Kansas City to Williams was reduced to \$38.25, or to 3.01 cents per mile. On the basis prescribed in *Western Passenger Fares* the fare from Kansas City to Williams would be \$36.32. However, that decision can not be regarded as a finding that the present fares to Williams and other points in Arizona are unreasonable to the extent that they exceed rates constructed on the bases outlined therein. It was only the proposed increases that were involved and the decision can only be regarded as fixing reasonable fares in those instances where by virtue thereof carriers established increased fares. It is not understood that the complainant alleges that the carriers have not complied with the bases prescribed by us in *Western Passenger Fares*, but that the bases prescribed therein would be reasonable for application in the construction of interstate fares to Arizona.

The principal defendants in this case are the Atchison, Topeka & Santa Fe Railway Company and the Southern Pacific Company, which traverse the state of Arizona. The other defendants are certain of the Southern Pacific's allied lines composing with it the so-called Sunset route to California; the Chicago, Rock Island & Pacific Railway Company and the Chicago, Rock Island & Gulf Railway Company; the Chicago, Burlington & Quincy Railroad Company; the Arizona Eastern Railroad Company, located wholly within the state of Arizona, and the El Paso & Southwestern Company. The defense was borne by the Santa Fe, the Southern Pacific, the El Paso & Southwestern, and the Arizona Eastern. None of the other defendants was represented at the hearing.

Complainant presented three exhibits showing the first and second class fares from Chicago, St. Louis, Memphis, New Orleans, and Cheyenne, Wyo., to Phoenix, Ariz., as compared with similar fares to terminal points in California, Oregon, and Washington, and to certain intermediate points in Kansas, Nebraska, Montana, Colorado, Utah, Nevada, Texas, and New Mexico. It is not alleged that the fares from Cheyenne are unreasonable. The following table is illustrative of these exhibits:

From Chicago to—	Short-line distance.	First class.	Per mile.
	<i>Miles.</i>		<i>Cents.</i>
Phoenix, Ariz.....	1,833	\$53.80	2.93
Los Angeles, Cal.....	2,276	60.85	2.67
San Francisco, Cal.....	2,271	60.85	2.68
Portland, Oreg.....	2,241	58.57	2.61
Seattle, Wash.....	2,194	58.57	2.67

The short-line distances only are shown because it is clear from the evidence that the short route is the fare-making line. However, complainant has shown the distances via various routes to the different points of destination. For example, the first-class fare of \$60.85 from Chicago to Los Angeles applies not only via the direct route through El Paso, but also via several other routes, including that through St. Paul, Seattle, and Portland. Although the lower fare to Seattle which applies via the short line by way of Granger, Wyo., and Huntington, Oreg., is shown, the terminal blanketed fare of \$60.85 also applies from Chicago to Seattle by way of Denver, Colo., and Albuquerque, N. Mex., a distance of 4,057 miles. The distance from Chicago via the Illinois Central Railroad to New Orleans, thence via the Southern Pacific through El Paso, Maricopa, Ariz., to Phoenix is 2,521 miles. The stated fare to Phoenix also applies via that route and yields earnings of 2.13 cents per mile. The route via the El Paso gateway to Los Angeles and to Phoenix is the same as far as Maricopa. Complainant states that if the earnings per passenger per mile derived from the fare over the short line from Chicago to Los Angeles is applied to the distance of 1,833 miles from Chicago to Phoenix, a constructive fare of \$48.94 would be obtained, \$4.86 less than the actual fare to Phoenix.

But the defendants contend that the fares to Pacific coast terminals and points intermediate thereto in the states of California, Oregon, and Washington were established under competitive circumstances and conditions which do not obtain in Arizona, which is given the benefit of such fares to California in that the fares to Arizona are constructed on the basis of the lowest combination of fares to and from Albuquerque and Deming, N. Mex., but not to exceed the fares to San Francisco as maxima.

The historical development of the fares to the Pacific coast is detailed at some length by the defendants. About 20 years ago, after a rate war, the first-class fare from Omaha, Nebr., to San Francisco was made \$50. That fare was first made to apply via the short line of 1,782 miles of the Union Pacific Railroad to Ogden, Utah, and the Southern Pacific Company beyond. The short-line fare thus established was met from Omaha and other Missouri River cities to San Francisco by the lines leading through Albuquerque and Mojave, Cal.; through Albuquerque, Barstow, and Los Angeles; and through El Paso and Los Angeles. The fares to points intermediate to San Francisco via the various routes could not be higher than the fares to San Francisco. Via some of the routes Los Angeles is intermediate to San Francisco and Seattle; via others Seattle is intermediate to San Francisco and Los Angeles. The \$50 fare was not composed, as is normally the case, of the sum of the fares pub-

lished for application over the short-line ticketing route, but represents what the carriers at the time of its establishment considered they should receive for the transportation of a passenger from Omaha to San Francisco. The fares from the Missouri River points to San Francisco are the bases for the construction of fares from points beyond the Missouri River. For example, the fare of \$10.85 from Chicago to Omaha, plus the fare thence to San Francisco, makes the fare of \$60.85 now in effect from Chicago to San Francisco and the fare of \$29.80 from Kansas City to Deming plus the fare of \$13.85 from Deming to Phoenix makes the present fare of \$43.65 from Kansas City to Phoenix. Fares beyond Ogden were formerly constructed by adding to the Ogden fare 4 cents per mile for the distance beyond. Since the increase in the Ogden fare, authorized in *Western Passenger Fares*, the fares to points beyond are less than 4 cents per mile higher than the fare to Ogden. For example, the difference between the first-class fares to Reno and to Ogden, prorated over the distance between these points, amounts approximately to 3.5 cents per mile. The first-class fare from the Missouri River territory to the Pacific coast destinations has remained unchanged, but to Phoenix, a representative point in Arizona, it has been reduced from \$51.80 in 1902 to \$43.65 in 1917. Since 1912 the first-class fare from Chicago to San Francisco has been increased from \$59.75 to \$60.85, and no corresponding increase has been made in the fare from Chicago to Arizona points of destination. In 1912 the second-class fares from Chicago to San Francisco and to Phoenix were the same, \$49.75. Since that time the second-class fare to San Francisco, illustrative of California terminals, has been increased to \$53.35, but the fare to Phoenix has remained unchanged.

The decrease in the fares to Arizona points resulted from the construction of parts of the short line via the Chicago, Rock Island & Pacific, Chicago, Rock Island & Gulf, and the El Paso & Southwestern from Kansas City to El Paso, and also from a reduction in the fare from Deming to Arizona points from a basis of 5 cents to 4 cents per mile.

Complainant asserts that by showing that the fare per mile to Arizona points is greater than the fare per mile to California points, notwithstanding the fact that the haul to California is through Arizona, a presumption of unreasonableness is raised which it is incumbent upon the defendants to remove. But the burden of proof does not shift, and complainant's own rate witness testified that there was a very extensive competitive territory on the Pacific coast which is controlled to a certain extent by the water lines that operate between Seattle and Tacoma, Wash.; Seattle and Portland; Seattle and San Francisco; Seattle and Los Angeles. A reasonable relation-

ship should, of course, be maintained between fares to California points and to intermediate points. It is not alleged, however, that the fares to Arizona destinations are unduly prejudicial. On the record we are not warranted in finding that the fares to Pacific coast destinations are a proper measure of the fares to Arizona points. In fact, complainant suggests that the fares to California points be increased, which has already been done from Chicago, to compensate the carriers for a reduction in the fares to Arizona points to place them on a parity with fares to points in the intermountain states.

The complainant's allegation that the fares to Arizona points are unreasonable as compared with fares to points in Nevada and Utah and to points in other western states is based upon comparisons of which the following are typical:

	First class.	Distance.	Per mile.
		<i>Miles.</i>	<i>Cents.</i>
From Chicago to—			
Phoenix, Ariz.....	\$53.80	2,065	2.60
Ellensburg, Wash.....	49.35	2,079	2.37
Wenatchee, Wash.....	51.35	2,061	2.49
Connell, Wash.....	46.10	2,065	2.23
Pendleton, Oreg.....	46.10	2,056	2.24
Palisade, Nev.....	46.70	2,067	2.26
Crestline, Nev.....	47.50	2,066	2.30
From Memphis, Tenn., to—			
Phoenix, Ariz.....	50.90	1,878	2.71
Ogden, Utah.....	43.27	1,873	2.30

The distances to Phoenix and San Francisco are average distances; the distances to the other points, actual distances. The routes are not stated, although Ellensburg, Connell, Pendleton, and Palisade are points common to two transcontinental railroads, while Phoenix is located on a branch line of the Santa Fe and on the Arizona Eastern Railroad. The point sought to be emphasized by the fares shown in this exhibit is that for actual distances into intermountain territory equal to the average distance to Phoenix the fares to Phoenix are considerably higher. For example, the actual distance to Connell is exactly the average distance from Chicago to Phoenix, and yet the first-class fare to Phoenix is \$7.70 higher than the similar fare to Connell. If the short-line distance to Phoenix had been taken and the fare for a similar distance compared with it the disparity would be greater. Complainant deduces from this exhibit that if the average distance from Chicago to Phoenix were projected westward from Chicago along the lines of the Chicago, Milwaukee & St. Paul, Great Northern, Northern Pacific, Union Pacific, Western Pacific, Southern Pacific (central route), and San Pedro, Los Angeles & Salt Lake railroads, the first-class fare from Chicago to Phoenix would be found to be \$5.95 higher than the average of the fares on those roads for equal distances from Chicago.

From general observation obtained from traveling over the northern and the southern lines to the Pacific coast, the witness for complainant who submitted the exhibits of comparative fares testified that the northern lines labor under greater operating disabilities in handling freight and passenger traffic than do the southern lines, principally on account of snow in the winter. Defendants objected to the introduction of such testimony because the witness was not qualified to testify that the circumstances and conditions surrounding the transportation of passengers were so substantially similar as to justify the fares for equal distances on the southern lines being the same as those on the northern lines. Complainant apparently considers that the fares on the northern lines should be adopted as the standard of reasonableness of fares for similar distances to points in Arizona.

Complainant states:

As it has been the settled policy of the northern lines in the development of the territory on and contiguous to their lines to encourage immigration by first giving the intending settler reasonable passenger fares, we are at a loss to understand why that policy has not been followed by the lines serving Arizona.

The colonization and development of Arizona, it is stated, has materially suffered from the higher fares that are exacted to points within its borders. In so far as this may be true it indicates the importance of maintaining reasonable fares to Arizona. However, the Commission can not compel a carrier to reduce its fares solely on the ground that to do so would induce settlement of sparsely populated communities.

A member of the complainant, who was formerly employed by the Denver & Rio Grande Railroad, expressed the view that the operating conditions, due to the gradients and curvatures of the track and the altitude of the country traversed through the mountainous portion of Colorado, are less favorable than on the Sunset route. It was shown that at Summit, Cal., where the Southern Pacific passes over the divide the altitude is 7,018 feet and that the total yearly precipitation, including rain and snowfall, is 433.35 inches, while the rainfall at Benson, Ariz., on the Southern Pacific, is about 11.78 inches per year. The altitude at Mescal, 9 miles from Benson, is 4,060 feet; at Dragoon, 22 miles east of Benson, 4,614 feet, while the altitude of Pisano, Tex., east of El Paso, is 5,082 feet. On the Santa Fe line, the elevation at Gallup, N. Mex., about 32 miles east of the Arizona-New Mexico state line, is 6,501 feet; at Winslow, Ariz., 4,856 feet; at Riordan, Ariz., 7,310 feet; at Ash Fork, Ariz., 5,136 feet; at Yampai, Ariz., 5,575 feet; and at Needles, Cal., 12 miles west of the Arizona-California state line, 482 feet. Due to climatic conditions in the western part of Arizona and eastern Cali-

ifornia there have been serious washouts and in some instances the Southern Pacific Company has been compelled to detour trains on its main line over the Santa Fe to avoid washouts in California. Arizona is also subject to torrential rainfalls and to excessive falls of snow. A witness for the Southern Pacific Company testified that he had "bucked snow in Arizona for 48 hours continuously" and recited instances where trains had been delayed 8 and 10 days by snow and by washouts. He expressed the view that washouts along the lines are more severe in the southwestern country than in any other section of the United States.

No coal is mined in Arizona; nor is oil produced there. Coal for the operation of passenger trains in Arizona is obtained from the Kern River field of California, north of the Tehachapi Mountains, requiring a heavy haul to Arizona, or from Gallup, N. Mex., from which the transportation to Winslow is down grade. The oil is also transported from California.

One witness testified that the water conditions in Arizona "are as bad as can be." In some instances the water has to be hauled for long distances in tank cars, and, to prevent scale in the locomotives, it must be treated before being used.

The outstanding facts in this case and the principal contentions of the parties have been stated. We have not detailed the statistics of operation, the kind of service accorded Arizona, which is necessarily the same on through trains as that given California through traffic, the character of equipment, the division of operating expenses between passenger and freight transportation or the increased cost and quality of equipment, because all of these considerations have been exhaustively treated in *Western Passenger Fares* and because upon that record we found that the carriers had sustained their contention that the business done by passenger train service is less profitable on the whole than is the freight service in this territory.

It will be recalled that among the fares alleged to be unjust and unreasonable are those from Albuquerque, Tucumcari, and Deming to Arizona points, where, as from El Paso to Arizona points, the basic fares are 4 cents per mile. The only evidence offered relative to these fares was an expression of opinion that the fare from Deming to Phoenix is unreasonable.

On the record as made in this case, we are of the opinion and find that complainant has not shown the passenger fares under attack to be unjust or unreasonable and therefore the complaint must be dismissed. It will be so ordered.

No. 7704.

CUMBERLAND TRANSPORTATION COMPANY

v.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY
COMPANY ET AL.

Submitted December 18, 1916. Decided June 21, 1917.

Upon hearing in the matter of the alleged failure of defendants properly to comply with the previous order of the Commission in this case; *Held*, That arrangements in connection with the interchange of less-than-carload traffic at Burnside, Ky., are unduly preferential of the Burnside & Burkesville Transportation Company, to the prejudice and disadvantage of the Cumberland Transportation Company. Defendants required to remove the undue prejudice and disadvantage found to exist.

J. V. Norman and J. S. Kelley, jr., for complainant.

R. Walton Moore, D. J. Rixey, jr., and Willis H. Fowle for defendants.

William Waddle for Burnside & Burkesville Transportation Company, intervener.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In the original report in this proceeding, 37 I. C. C., 463, we held, following to some extent the general principle announced in *Decatur Navigation Co. v. L. & N. R. R. Co.*, 31 I. C. C., 281, that the refusal of the principal defendant and its subsidiary line, hereinafter referred to as the defendant, to join with the complainant in establishing and maintaining through routes and joint rates between way landings on the Cumberland River and interstate points on the defendant's line, subjected the complainant to undue prejudice and was unduly preferential of the Burnside & Burkesville Transportation Company, a competing boat line referred to later in this report as the Burnside line. The order entered on these findings required the defendant to establish through routes and joint rates with the complainant between the points in question "in the same manner, on the same terms, and to the same extent as such through routes and joint rates are contemporaneously maintained by the said defendant in connection with" the Burnside line. Under this provision in the order through routes and joint rates with the complainant were established. But upon subsequent representations by the complainant that the defendant had not complied with the order in other respects,

the record was reopened for further hearing. The course pursued by the defendant, since the original report was announced and the order thereon served, has resulted, the complainant alleges, in transfer arrangements at Burnside, a Cumberland River landing in the state of Kentucky, where the defendant interchanges freight with the complainant as well as with the Burnside line, that are unduly preferential of the latter and unduly prejudicial to the complainant. The feature in the interchange arrangements, of which complaint is now made, relates to the complainant's less-than-carload freight, no objection being made to the defendant's method of handling its carload traffic.

The facilities at Burnside and the manner in which freight was interchanged by the defendant with the Burnside line prior to the date of the first hearing were fully described in our original report (id., p. 465). It will suffice here to say that the river warehouse of the defendant, at the top of the river bank, was then used exclusively for the transfer and temporary storage of the freight of the Burnside line. At the foot of the bank is moored a wharf boat, which was then owned and exclusively used by the latter line, as is the case now. Between the wharf boat and the river warehouse is an incline owned, and at the time of the original report also operated, by the defendant; but the employees of the Burnside line handled the traffic at the landing and also at the river warehouse at the top of the incline.

After the order under the original report was served, and prior to its effective date, the defendant leased the incline and the lower floor of the river warehouse to the Burnside line. At the same time instructions were given to the defendant's station employees, requiring all freight thereafter transferred from and to either boat line to be received or delivered at the defendant's so-called city warehouse on the other side of the defendant's right of way and directly opposite its river warehouse. Between the river warehouse and the city warehouse are two tracks of the defendant, and when each track is occupied by a freight car properly placed the space between the loading platforms of the two warehouses is bridged, with the result that the less-than-carload traffic of the Burnside line may be handled on trucks between the river warehouse and the city warehouse. The complainant asserts that care is taken to enable the Burnside line to do this as a common practice, but the defendant, while admitting that its cars are often so used, denies that they are designedly so placed as to facilitate the transfer in that way of the freight of the Burnside line. Nevertheless, the complainant, operating its own landing and incline at a point about 1,000 feet distant from the defendant's city warehouse, is compelled at all times to dray its less-than-carload traffic to and from the warehouse at a cost to it of about 2 cents per 100

pounds. Of this burden it complains in this supplemental proceeding as being unjust and unduly prejudicial.

The defendant contends that the designation of its so-called city warehouse as a common point of interchange was intended to place both boat lines on an equality in the transfer of their traffic and that the change made in the transfer arrangements since the original hearing has been detrimental to the Burnside line, while leaving the situation of the complainant unaffected. The complainant, on the other hand, contends that the present arrangement is unlawful in the advantage that it gives to its competitor in the handling of its less-than-carload traffic, and that it is the duty of the defendant carrier to operate its incline and river warehouse for the benefit of both boat lines, these being facilities required by the defendant for the purpose of serving the general shipping public. The complainant also contends that it is its right to have equal access to the defendant's river landing. The defendant, on the other hand, points to the fact that the wharf boat at the foot of its incline is owned by the Burnside line and is, therefore, not available to the complainant through any course the defendant may pursue. It is doubtless true that the Commission can not require the wharf boat to be placed at the disposition of the complainant. But the fact that the Burnside line owns the wharf boat is not in itself a sufficient answer to the demand of the complainant in this proceeding. The defendant owns the river bank not only at the foot of the incline, but for some distance on either side of the incline; and on some basis not disclosed of record it has permitted the Burnside line to moor its wharf boat at such a point on the bank as to shut off any access by the complainant to the incline. In this way the defendant, whether it so intended or not, has confined the use of its landing and incline and river warehouse to the Burnside line and has wholly deprived the complainant of any opportunity to use these facilities dedicated by the defendant to its service for the general public. The result of the whole situation is to put the complainant to a substantial expense in handling its less-than-carload traffic to and from the defendant's station, while its competitor is under no such disability.

Upon the whole record we conclude and find that in the present disposition of the use of its facilities the defendant has subjected the complainant to an undue prejudice and disadvantage. It is suggested of record that the difficulty may be overcome through the receipt and delivery by the defendant of the complainant's less-than-carload traffic at the complainant's own warehouse at the head of the complainant's incline; but the facts disclosed are not sufficient to justify an order requiring the defendant to do this. The situation could also be relieved by the defendant by according to the com-

plainant the equal use of its river landing. In one way or another, however, both lines must be put by the defendant on a substantial equality in the transfer of their less-than-carload traffic in order that the defendant may acquit itself of the further violation of section 3 in the manner shown upon the record.

An order will be entered to give effect to these conclusions.

No. 8221.

OLD VINCENNES DISTILLERY COMPANY

v.

BALTIMORE & OHIO SOUTHWESTERN RAILROAD
COMPANY.

Submitted May 21, 1917. Decided June 21, 1917.

Certain rates on corn in carloads from stations in Illinois located on the Baltimore & Ohio Southwestern Railroad to Vincennes, Ind., justified to the extent set forth in report.

A. B. Cronk and Isaac Born for complainant.

Edward Barton and William A. Eggers for defendant.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

Complainant, an Indiana corporation, engaged in the distillation and sale of spirits, alcohol, whisky, and gin at Vincennes, Ind., attacks as unreasonable and unduly prejudicial the rates applicable to the transportation of corn in carloads from points in Illinois on the line of the defendant, to Vincennes. Reparation is asked on all shipments made under these rates since the effective date thereof. The allegations of undue preference and prejudice are predicated upon comparisons with rates from the same points of origin to St. Louis, Mo., Cincinnati, Ohio, Springfield, Ill., Louisville, Ky., and Lawrenceburg, Ind. At those cities, except Springfield, complainant meets strong competition.

Vincennes is located on the east bank of the Wabash River, which, in that section, forms the boundary line between the states of Illinois and Indiana. The transportation here involved is therefore largely within the state of Illinois.

The rates here attacked became effective as to corn July 28, 1914, through the cancellation of certain specific commodity rates on corn.

These rates had become effective as to other grain on January 8, 1914, following our decision in *Grain Rates in Central Freight Association Territory*, 28 I. C. C., 549, which was made without prejudice to further consideration of particular rates. In that connection we said:

These tariffs under suspension involve not only a slight increase in grain rates from Illinois in all directions, but also a considerable readjustment of rates between localities and different kinds of grain. There are some reductions. In the past the rate on wheat seems to have been in many cases higher than that upon corn, while in other instances the reverse may have been true. These tariffs name the same rate from all points. Now the Commission has in no wise considered the propriety of these local adjustments. In approving this increase as a whole we do not in any way pass upon the lawfulness of individual rates, which may be brought to our attention upon complaint and considered upon their merits.

Complainant here asserts that the rates on corn in effect prior to July 28, 1914, were reasonable and should be restored. The present rates represent increases since January 1, 1910, and the burden of their justification is therefore upon the defendant. In the following table are shown the rates formerly effective, the present rates here attacked from representative stations in Illinois to Vincennes, and the distances, together with the maximum intrastate rates on corn prescribed by the Illinois state commission. It is upon comparison with these intrastate rates that defendant relies in part as establishing the reasonableness of the rates under attack.

To Vincennes from—	Miles.	Rates on corn effective prior to July 28, 1914.	Present rates on corn.	Illinois maximum rates on corn.
Lawrenceville.....	9.9	3.0	3.0	3.6
Claremont.....	25.6	3.5	4.5	4.6
Flora.....	54	4.0	6.5	5.7
Xenia.....	62.4	4.0	7.0	6.1
Fairfield.....	75.1	4.5	7.0	6.8
Cowden.....	101.9	4.5	7.0	7.4
Aviston.....	115.3	4.5	8.0	7.7
Millersville.....	125.4	4.5	7.0	7.9
Berry.....	150.5	4.5	7.0	8.5
Richland.....	174.4	5.0	8.0	8.9
Beardstown.....	208.1	5.5	8.0	9.9

The complaint names 91 points of origin. The rates from a few of the less distant stations are graded from 3 to 6.5 cents; from 53 stations, for distances ranging from 56.3 to 154.8 miles, a rate of 7 cents applies; from 27 stations, for distances ranging from 95 to 208 miles, the rate is 8 cents. The application of the blanket principle is not attacked by complainant and that principle is followed in the rates which complainant here asks for as reasonable. Defendant's comparison of the rates attacked with the Illinois state scale shows that the rates from 25 stations are higher than would

result from the application of that scale, the greatest difference being 1.1 cents; that the rates from 63 stations are lower than under that scale, the greatest difference being 2.2 cents; while the rates from three stations are the same as under that scale. The variations between the rates in effect and the state scale result chiefly from the grouping which has been described.

An examination of the foregoing table indicates that the increases in rates on corn to Vincennes, effective July 28, 1914, were relatively large. It also appears that the rates formerly in effect were materially lower than the Illinois state scale. The origin of the former rates is left in some obscurity on this record. Owing to the loss of tariff files, rates prior to 1905 were not shown. Some statements were made by defendant's witness, frankly described by him as hearsay, with reference to the establishment of the low rates on corn from Illinois points to Vincennes some time between 1895 and 1898 as an inducement to complainant's predecessors to locate the distillery at Vincennes. A complete tariff history of the rates since September 1, 1905, was offered in evidence. From this it appears that a milling-in-transit service was in effect on that date under a tariff provision reading as follows:

On shipments of corn from B. & O. S. W. stations in Illinois, consigned to the Vincennes Distilling Company, Vincennes, Ind., the product of which (alcohol, high wines, spirits, or feed) is shipped out via B. & O. S. W. R. R. regardless of destination, the net rate on the corn to Vincennes will be the domestic rates as per table of M. I. T. rates No. 2, on page 3 of original tariff, but not less than 2½ cents per 100 pounds. (From supp. No. 4 to B. & O. S. W. I. C. C. 4655, effective September 1, 1905.)

The rates referred to by this tariff provision were the proportions of the domestic rates from Illinois points to trunk line territory which were allotted to the haul from the points of origin to Vincennes when the corn was milled in transit at that point by the Vincennes Distilling Company and shipped over the line of the defendant. They were in some instances the same as those shown in the foregoing table in effect prior to July 28, 1914; in other instances they were somewhat lower than those rates. On May 20, 1907, transit rates were canceled and the local rates on corn to Vincennes became effective. These local rates were in nearly every instance 1 cent lower than the rates here attacked. In consequence of a fire the distillery ceased operations in 1907 and did not resume until 1909. Effective March 18, 1910, the defendant reduced its rates on corn into Vincennes but did not restore the transit service. These reduced rates were substantially the same as those shown in the foregoing table in effect prior to July 28, 1914. They were in a few instances the same as had been previously applicable in connection with the transit service, while from the greater number of stations they were

from one-half cent to 1 cent higher. These rates were in turn replaced by the present rates which, as stated, are 1 cent higher from practically all stations than the local rates which were effective from May 20, 1907, to March 18, 1910, and are from 1 cent to 3 cents higher than the rates which were effective from March 18, 1910, to July 28, 1914.

Complainant now urges that the present rates are unreasonable as shown by comparison with rates on corn applicable to other movements in the same general territory. By such comparisons it is shown that rates from certain stations in Illinois on the line of the Cleveland, Cincinnati, Chicago & St. Louis are from 1 cent to $2\frac{1}{2}$ cents per 100 pounds lower than the rates under attack for similar distances, and from certain stations in Indiana on the line of the Vandalia, to Vincennes, are from 1 cent to 3.5 cents lower than the rates under attack for similar distances. It is also shown that rates on corn for certain intrastate movements in Illinois and Ohio, and from certain points in Indiana to points in Illinois, Ohio, and Kentucky, are lower than the rates under attack. This evidence was supplemented by testimony to the effect that the transportation conditions from stations in Illinois on the line of the defendant to Vincennes are more favorable than those affecting other lines operating in the same general territory.

Counsel for defendant object to the evidence as to comparative transportation conditions upon the ground that it is too general, and also upon the ground that the witness who gave that evidence did not show an intimate familiarity with the physical conditions existing throughout the territory as to which he testified. That witness, however, being asked how he acquired his knowledge of the comparative transportation conditions as to which he testified, said:

By personal study of maps and charts, by examination of the sheets and the tariffs that had been issued on this subject, from relief maps, particularly but also from personal observation under those conditions, particularly of the watershed conditions.

Testimony as to comparative transportation conditions must of necessity be somewhat general, and to require a witness to have an intimate familiarity with the physical conditions existing on each of two roads before he can be permitted to testify that transportation conditions on the two roads are similar would ordinarily exclude as witnesses all persons who had not been actively employed in the operation of both roads. If the general statements of the witness are untrue, the carrier against which they are offered can establish that fact, particularly when the burden of proof is upon the defendant.

Defendant shows that the rates on corn to Vincennes in effect prior to July 28, 1914, were substantially lower than the rates on corn

grain, and that this was an exception to the general basis of rates on grain maintained by defendant. On that date they were made the same.

It appears that the movement of grain other than corn to Vincennes is negligible as compared to the movement of corn to that point. For the years August, 1911, to August, 1916, inclusive, the defendant's total revenue upon other grain to Vincennes was \$340.73, while the average revenue per year upon corn for two representative years during that period was approximately \$5,400.

Defendant shows rates of 7 cents and 8 cents, respectively, from various Illinois stations to St. Louis, Mo., the rate of 7 cents applying to distances ranging from 76 to 250 miles, and the rates of 8 cents applying to distances ranging from 142 to 170 miles. To St. Louis from the larger number of stations the rate of 7 cents applies as a blanket rate. This is true of all stations on the Beardstown branch, Springfield to Beardstown, the rate to Vincennes being 8 cents, although the distance from those stations is 42 miles less to Vincennes than to St. Louis. It is explained by defendant that the Beardstown branch is crossed by more direct lines to St. Louis, which forces a somewhat lower rate than would otherwise apply. For the shorter distances rates are in some cases higher to St. Louis than to Vincennes. To Vincennes, as we have seen, a rate of 7 cents applies for distances ranging from 56.3 to 154.8 miles, and a rate of 8 cents for distances ranging from 95 to 208 miles. Defendant also offers for comparison a rate of 10 cents to Louisville, Ky., and a like rate to Lawrenceburg, Ind., and Cincinnati, Ohio, each from the same Illinois stations, the distances to Louisville ranging from 177 to 382 miles, the distances to Lawrenceburg ranging from 169 to 374 miles, and the distances to Cincinnati ranging from 191 miles to 396 miles. These rates and also the rates to St. Louis referred to are placed in the record by defendant in answer to complainant's claim of undue preference and prejudice. It appears that out of the rate of 10 cents to Louisville defendant absorbs a bridge toll of 1 cent.

The Illinois state scale on which defendant relies is a maximum scale, and the lines other than defendant maintain many rates on corn between points in Illinois which are much lower than the maximum rates prescribed by that scale.

In *Rates on Beer and Other Malt Products*, 31 I. C. C., 544, 545, the Commission said:

* * * we can not say that merely because a higher intrastate rate exists that an increase of an interstate rate to meet the state-made rate is justified, even though the transportation conditions as to distance and territory are similar.

While defendant's rates on corn to Vincennes in effect immediately prior to July 28, 1914, had been in effect only since March 18, 1910, at all times from September 1, 1905, to July 28, 1914, the rates were lower than those now in effect.

We thus have a situation similar to that which we considered in *Kentucky Distilleries & Warehouse Co. v. L. & N. R. R. Co.*, 36 I. C. C., 293, 301. In that case we said:

The fact that so-called special rates were maintained for 34 years and that the rates which the complainant seeks to have reestablished were in effect from 1899 to 1910 is not without significance. We have frequently said that the voluntary maintenance of rates for a long period is one fact to be considered in determining the reasonableness of the rates. * * *

We must, therefore, give some weight to the fact that lower rates than those now in effect were maintained for many years prior to July 28, 1914, but it does not follow that the rates in effect are unreasonable to the full extent that they exceed the rates which were in effect immediately prior to July 28, 1914, or that defendant has not justified some increase in the rates which were then in effect.

Upon the facts of record it is our conclusion and we find that the rates in effect which are less than 6 cents per 100 pounds have been justified by defendant and that other rates under attack have been justified only to the following extent: The rates of 8 cents per 100 pounds to the extent of 7 cents, the rates of 7 cents to the extent of 6.5 cents, and the rates of 6.5 cents to the extent of 6 cents. To the extent that those rates exceed 7 cents, 6.5 cents, and 6 cents, respectively, they are found to be unreasonable. An appropriate order will be entered. No reparation will be awarded.

45 I. C. C.

No. 9316.

INTERNATIONAL PAPER COMPANY

v.

MAINE CENTRAL RAILROAD COMPANY ET AL.

Submitted March 20, 1917. Decided June 15, 1917.

Rate on news printing paper in carloads from Livermore Falls, Me., to Boston, Mass., for export, found to have been unreasonable. Reparation awarded.

D. C. Lorentz for complainant.

Lucien Snow for Maine Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of paper, with its principal office at New York, N. Y., and a mill at Livermore Falls, Me. By complaint, filed October 24, 1916, it alleges that the rate of 10 cents per 100 pounds charged by defendants on four carloads of news printing paper shipped from Livermore Falls to Boston, Mass., for export, during the period from January 22 to February 18, 1914, inclusive, was unreasonable to the extent that it exceeded $8\frac{1}{2}$ cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally January 19, 1916. Rates are stated in cents per 100 pounds.

The shipments moved over defendants' lines and charges were assessed at a commodity rate of 10 cents, legally applicable. For a number of years prior to January 1, 1914, defendants maintained a commodity rate of $8\frac{1}{2}$ cents on news printing paper, in carloads, from Livermore Falls to Boston, for export. On that date through error in tariff publication it was increased to 10 cents. The $8\frac{1}{2}$ -cent rate was reinstated, effective February 28, 1914, and has since applied. As the rate assailed represents an increase since January 1, 1910, the burden is upon defendants to justify it. Defendants offered no evidence.

It appears that on two of the shipments refunds of the charges collected down to the basis of the $8\frac{1}{2}$ -cent rate were erroneously made by defendants, and the record is not clear as to whether all of the amounts so refunded have been repaid by complainant to defendants.

We find that the rate assailed was unreasonable to the extent that it exceeded $8\frac{1}{2}$ cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Collection of any outstanding undercharges may be waived. As the rate found reasonable has been in effect for more than three years, no order for the future is necessary.

45 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 922.

OAK HILLS, COLO., COAL.

Submitted March 9, 1917. Decided June 21, 1917.

Proposed cancellation of joint rates on bituminous coal from the Oak Hills, Colo., district to points on the Chicago, Rock Island & Pacific Railway in Kansas, Nebraska, and Missouri found not to have been justified. Certain increases permitted in the joint rates to stations south and west of Herington, Kans. Suspended schedules ordered canceled.

Dudley W. Strickland for protestants.

A. E. Helm and *H. O. Caster* for Public Utilities Commission of Kansas.

G. Frank Morris for Foster Lumber Company.

Tyson S. Dines, *Tyson Dines, jr.*, *Carle Whitehead*, and *Albert L. Vogl* for Denver & Salt Lake Railroad Company.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

By supplement No. 1 to tariff I. C. C. No. 39, filed to become effective September 18, 1916, the Denver & Salt Lake Railroad, hereinafter called the Moffat road, proposed to cancel the joint rates on bituminous coal from mines in the Oak Hills district in Colorado to destinations in Kansas, Nebraska, and Missouri on the line of the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island. Cancellation of the joint rates would leave in effect higher combination rates and upon protests of coal operators, dealers, and the Public Utilities Commission of the state of Kansas the schedules were suspended until January 16, 1917, and later until July 16, 1917, pending an investigation into the reasonableness of the increased rates. Rates herein are stated in dollars and cents per ton of 2,000 pounds.

The rates here proposed to be canceled were prescribed by us in *Coal Rates from Oak Hills, Colo.*, 30 I. C. C., 505. Prior to that proceeding the Moffat road had published certain joint rates on all grades of bituminous coal from the Oak Hills district to Rock Island destinations, but shortly after they had been made effective the Rock Island notified it that the rates on mine run and slack coal had not been authorized and insisted upon their cancellation. A

second tariff was thereupon published, which showed increases over the rates in the first tariff. This action led to protests by the Oak Hills operators and the increased rates were suspended. The investigation that followed resulted in the application of the Walsenburg, Colo., basis of rates from the Oak Hills district to destinations on the Rock Island. The Walsenburg district is in southern Colorado, about 186 miles from Denver. The average distance of the Oak Hills mines to Denver was at that time 197 miles. It was shown that the coal produced in the two fields are of the same character, sell in the markets at the same price, and move at the same rates to destination territory on other lines parallel with the Rock Island.

The principal objection of the Rock Island to the establishment of Walsenburg rates from Oak Hills to its stations east of the Colorado-Kansas state line was the difference in the distance from the two fields. The Rock Island has two lines in Colorado, one extending from Limon, Colo., through Colorado Springs to Pueblo, 68 miles from the Walsenburg field, the other from Limon to Denver. Walsenburg coal is delivered to the Rock Island at Pueblo and Oak Hills coal at Denver. The difference in the distances at Limon was then 95 miles in favor of the Walsenburg district. The coal from the two districts meets at Limon and the same difference in distance obtains at all points east thereof.

In compliance with our order in that case the Walsenburg basis of rates was established from the Oak Hills district on September 1, 1914. The carriers were unable to agree upon the divisions, and a proceeding was instituted to obtain a supplemental order prescribing them. The Moffat road contended that it was entitled to the same divisions on coal destined to Rock Island points that it received on coal destined to points on the Union Pacific and Chicago, Burlington & Quincy railroads, or \$1.30 per ton on lump coal. The Rock Island insisted upon a recognition of its advantageous location with respect to the Walsenburg field and demanded divisions based on the ton-mile revenue it receives on Walsenburg coal applied to its mileage from Denver. As the result of that proceeding, 35 I. C. C., 456, the Moffat road was found to be entitled to divisions of \$1.18 per ton on lump coal and \$1.12 per ton on nut, pea, and slack coal. We subsequently modified our finding to the extent of according to the Moffat road a division of \$1.18 per ton on the lower grades of coal when the rates on all kinds were the same. 40 I. C. C., 497. The divisions allotted to the Moffat road were inclusive of a switching charge of 20 cents per ton at Denver, thus reducing its revenue to 98 cents and 92 cents per ton on lump and slack coal, respectively.

It appears from the evidence herein that neither the Moffat road nor the Rock Island is averse to the continuance of joint rates from

the Oak Hills district to the destinations in question. The Moffat road does not oppose the Walsenburg basis, but alleges that it can not afford to participate in the traffic under the present adjustment of divisions. The Rock Island, on the other hand, renews its objections to the Walsenburg basis for the reasons urged in the former case, although that basis is now in effect to points in the same general territory on other lines. Neither carrier attempts to justify the full combination of local rates to and from Denver, but both have proposed somewhat lower bases. The Moffat road offers to accept \$1.30 per ton, exclusive of the switching charge, for its services to Denver either as a division of joint rates or as a separately established proportional rate. Its local rate on lump coal to Denver is \$1.60 per ton. The Rock Island has published a tariff of proportional rates from Denver based on the revenue per ton-mile received on Walsenburg coal. A comparison of the rates and revenue under the present and proposed adjustments to representative destinations on the Rock Island, not including the charge for switching, is shown in the following table:

Rates and revenue under present and proposed adjustments.

From Oak Hills to—	Distance.	Present—		Proposed—	
		Rate.	Revenue per ton-mile.	Rate.	Revenue per ton-mile.
	<i>Miles.</i>		<i>Mills.</i>		<i>Mills.</i>
Goodland, Kans.....	409	\$3.45	8.4	\$3.58	8.8
Levant, Kans.....	437	3.45	7.9	3.65	8.4
Colby, Kans.....	445	3.50	7.9	3.69	8.3
Gem, Kans.....	453	3.55	7.8	3.74	8.3
Rexford, Kans.....	462	3.60	7.8	3.79	8.2
Selden, Kans.....	473	3.65	7.7	3.85	8.1
Dresden, Kans.....	482	3.75	7.8	3.96	8.2
Phillipsburg, Kans.....	549	3.75	6.8	4.03	7.3
Montrose, Kans.....	618	3.75	6	4.07	6.6
Belleville, Kans.....	643	3.75	5.8	4.09	6.4
Fairbury, Nebr.....	677	3.75	5.5	4.15	6.1
Lincoln, Nebr.....	734	3.75	5.1	4.17	5.7
Omaha, Nebr.....	793	3.75	4.7	4.18	5.3
St. Joseph, Mo.....	834	3.75	4.5	4.15	5
Kansas City, Mo.....	847	3.75	4.4	4.15	4.9
Herington, Kans.....	797	3.50	4.4	4.17	5.2
Salina, Kans.....	846	3.50	4.1	(1)	(1)
Wichita, Kans.....	870	3.25	3.7	(1)	(1)
Caldwell, Kans.....	920	3.25	3.5	(1)	(1)

¹ No proportional rates from Denver.

It will be observed that the increases in the rates under the proposed adjustment range from 13 cents per ton to 43 cents per ton, except at Herington and points on the line extending south therefrom to Caldwell, where greater increases are proposed. The coal operators protest against these increases and allege that if the higher rates are permitted to become effective they will be unable to compete in this territory with the coal produced in the Walsenburg

district. The effect of an increase in the rates to Rock Island stations, it is said, will be to restrict the movement of Oak Hills coal. During the calendar year 1915, 41,953 tons of coal were shipped from the Oak Hills mines to Rock Island destinations, 24,921 tons of which moved to noncompetitive points.

The justification chiefly urged by the Rock Island for higher rates from Oak Hills than from Walsenburg lies in the relative distances from the two fields. It submits—

that the actions of the Union Pacific and Chicago, Burlington & Quincy railroads with respect to their coal traffic are the result of their own traffic and geographical necessities and can have no weight in determining the course of the Rock Island in view of its entirely different traffic and geographical situation.

Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 16 I. C. C., 387, in which the Walsenburg rates were found reasonable to points on the Rock Island, is cited as justifying higher rates from Oak Hills. It should be recalled, however, that in that case we also approved the Walsenburg rates to points on the Union Pacific and Chicago, Burlington & Quincy railroads where the movement of the coal is through Denver.

The Rock Island contends that the rates from Oak Hills should under no circumstances be less than those applying from the Trinidad, Colo., field which lies 28 miles south of the Walsenburg field. The rates from the Trinidad field are uniformly 25 cents per ton higher than the rates from the Walsenburg field on traffic destined to points reached through Pueblo or Denver. The Rock Island cites a number of cases in which we have prescribed higher rates from certain Colorado coal fields than are in effect from Walsenburg, notably, *South Canon Coal Co. v. C. M. Ry. Co.*, 38 I. C. C., 174; *Rates from Walsenburg Coal Field*, 26 I. C. C., 85; and *Hayden Bros. Coal Corporation v. D. & S. L. R. R. Co.*, 39 I. C. C., 94. In the *South Canon Case* we held that the rates from South Canon, Colo., to destinations in Kansas, Nebraska, and other states should be 25 cents per ton higher than the rates from Walsenburg to the same destinations. South Canon is on the Colorado Midland Railway 214 miles west of Colorado Springs and 291 miles from Denver. Rates to points on the Rock Island were not involved in that case. In *Rates from Walsenburg Coal Field* we permitted the Atchison, Topeka & Santa Fe Railway to establish joint rates from the Walsenburg field to points on its line in Kansas 10 cents per ton higher than the rates contemporaneously in effect via its one-line route from the Canon City field. In the *Hayden Brothers Case* we prescribed higher than Walsenburg rates to certain points on the Atchison, Topeka & Santa Fe Railway where the difference in distances amounted to over 250

miles, and in the same case Walsenburg rates were prescribed to other points on that line and to points on the Missouri Pacific Railway and Chicago & North Western Railway as far east as the Missouri River over routes involving three carriers.

The Public Utilities Commission of Kansas opposes the view of the Rock Island that it is entitled to have its situation independently considered. It argues that the policy of the carriers and of this Commission in other cases has been to deal with this territory as a whole and that the Rock Island has been benefited thereby in that its rates from Walsenburg are the same as or higher than those of other lines, although its mileage is less. An exhibit was filed comparing the rates from Oak Hills, and therefore from Walsenburg, to Rock Island destinations with rates to points on the Union Pacific and Chicago, Burlington & Quincy railroads of equal distances, for the purpose of showing that the rates to Rock Island points are now on a higher level than the rates to points on the other lines. It will suffice to say, without reproducing the exhibit, that the Missouri River blanket rate of \$3.75 per ton is first encountered on the Rock Island at Dresden, Kans., 482 miles from Oak Hills, on the Chicago, Burlington & Quincy Railroad at Republican, Nebr., 545 miles from Oak Hills, and on the Union Pacific Railroad at a point in Kansas 672 miles from Oak Hills.

The testimony of record in this proceeding recites in detail the costly operating difficulties to which the Moffat road is subjected. This testimony is offered by the Moffat road to show that the divisions allotted to it by our supplemental orders in *Coal from Oak Hills, Colo., supra*, are insufficient and is likewise relied upon by the Rock Island as justifying a higher level of rates.

The Moffat road endeavors to show that the cost of handling this coal traffic amounts to \$1.41 per ton. This is the same figure presented in the supplemental proceeding on the matter of divisions in *Hayden Bros. Coal Corporation v. D. & S. L. R. R. Co.*, 45 I. C. C., 236. In that case we determined that this figure did not accurately reflect the actual cost per ton of transporting coal from mines in the Oak Hills district on the Moffat road to its interchange with connecting lines in or near Denver. The same criticisms there made of the cost analysis apply here.

The Moffat road's attempted justification of the increased rates which will prevail if the proposed cancellation of these joint rates is permitted rests entirely upon the alleged insufficiency of the divisions which it has been accorded. It does not complain as to the volume of the rates themselves. The Rock Island's justification, also, consists largely in an attempted showing of too little return under its division of the present joint rates.

We have invariably held that the cancellation of joint rates can not be justified merely on the ground of inability to agree upon the proper divisions of such rates. The evidence of record does not justify such cancellation, with the resulting application of combination rates considerably higher than the prevailing joint rates. The record, moreover, contains no showing upon which an increase in the joint rates themselves can be permitted, except as to stations south and west of Herington, Kans., where at present low joint rates are in effect, resulting in fourth section departures. We therefore conclude and find that the respondents have not justified the proposed cancellation of the joint rates now effective, and the suspended schedules will be required to be canceled. To stations between Herington and Caldwell, opposite indices 1445 to 1483 in Denver & Salt Lake Railroad Company's tariff I. C. C. No. 39, joint rates of \$3.75 per ton will be permitted to become effective when properly filed in a subsequent tariff.

45 I. C. C.

No. 9125.

COCA-COLA COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted January 6, 1917. Decided June 21, 1917.

Western classification rating on Coca-Cola sirup in less than carloads, increased from fourth class to second class on June 15, 1915, found not justified on shipments in bulk in barrels or kegs. Third-class rating prescribed for the future and reparation denied. Increased ratings on shipments in other containers found justified.

Wm. A. Wimbish and Charles E. Cotterill for complainant.

W. E. Prendergast, R. C. Fyfe, and Robert W. Fyfe for defendants.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

On June 15, 1915, the western classification rating on flavoring sirups in less than carloads was increased from fourth class to second class. The complaint in this case, filed by a corporation engaged in the manufacture and sale of a colored acidulated sirup known as Coca-Cola sirup, attacks the increased rating as unjust, unreasonable, and excessive, and asks for reparation on past shipments.

Prior to April 1, 1906, flavoring sirups shipped in casks, kegs, or boxes were rated second class in less than carloads, and fourth class in carloads, in the western classification. On that date these ratings were reduced to fourth class in less than carloads and fifth class in carloads. The reduced ratings were established on the petition of a manufacturer of crushed fruit sirups, who represented that the value of such flavoring sirups was 55 cents per gallon. During the latter part of 1914 it came to the notice of western carriers that the value of flavoring sirups was in excess of \$1 per gallon. Predicated on this value, the ratings were advanced, effective June 15, 1915, to second class in less than carloads and class A in carloads. The increased ratings apply on shipments in glass, earthenware, and metal cans, packed in boxes or barrels, and also in bulk in barrels.

The sirup manufactured by complainant is made up of about 50 per cent sugar, 44 per cent water, and 6 per cent various characteristic elements which contribute its aromatic flavor. It is used as a beverage by the addition of 6 ounces of carbonated water to 1 ounce of sirup. It is stated in behalf of complainant that the purpose of

the sirup is not to flavor the water, but that the water is used to dilute the sirup in order to make it palatable, and that strictly speaking Coca-Cola sirup is a flavored sirup, not a flavoring sirup. Flavoring sirups are made of crushed fruits, are much more concentrated in form than flavored sirups, and must be mixed with three times their bulk in a simple sirup of sugar and water before they can be used. When so mixed these sirups are brought to the same stage of manufacture and use as Coca-Cola and other flavored sirups. Notwithstanding this distinction both kinds of sirup move under the same general description of flavoring sirups in western as well as in southern and official classification territories.

The wholesale price of Coca-Cola sirup, stated of record, is \$1.50 per gallon and of other flavored and flavoring sirups from \$1.25 to \$2 per gallon. The average wholesale price of the sirups sold by six leading manufacturers is about \$1.33 per gallon. The average net weight of Coca-Cola sirup is approximately 10½ pounds per gallon, while that of the more concentrated flavoring sirups is slightly heavier.

Shipments of Coca-Cola sirup are made in barrels which range in capacity from 40 to 50 gallons, in 5 and 10 gallon kegs, and in boxes containing two 1-gallon glass jugs. About 92 per cent of the shipments are made in bulk in wood. The barrels used are mostly secondhand whisky and spirit barrels, and weigh about 75 pounds each. The 10-gallon kegs weigh about 19 pounds and the 5-gallon kegs about 11 pounds. As returned empty carriers these containers are rated fourth class in the western classification. The average weight of the containers is about 14 per cent of the weight of the container and contents. The more concentrated flavoring sirups are not shipped in bulk in wood, but in glass jugs, usually packed four jugs to the box.

The sirups in question are not affected by changes in temperature. The character and shape of the packages are such as to permit easy and economical handling in loading and unloading. The susceptibility of the shipments to damage in transit, especially when made in bulk in barrels and kegs, is thus reduced to a minimum. Complainant, with manufacturing plants at Atlanta, Ga., Chicago, Ill., Dallas, Tex., Los Angeles, Cal., and Kansas City, Mo., and warehouses at Memphis, Tenn., and New Orleans, La., distributes its product throughout western classification territory. During the year 1915 its shipments from the Chicago, Los Angeles, and Dallas plants to points in western classification territory aggregated 32,751,420 pounds, on which the claims collected for loss and damage amounted to \$501.13. The total freight charges paid on all shipments made in the western classification territory during that year amounted

to \$59,515.94. It is estimated that on the second-class rating these charges would have been increased \$27,166.04, or 46 per cent.

The only witness for defendants was a member of the Western Classification Committee. In support of the reasonableness of the increased rating on flavoring sirups in less than carloads, this witness submitted comparisons with the ratings, value, and weight per gallon of other heavy liquids. These comparisons are summarized in the following table:

Commodity in barrels.	Classification rating, L. C. L.	Value per gallon.	Weight per gallon.	Commodity in barrels.	Classification rating, L. C. L.	Value per gallon.	Weight per gallon.
		<i>Cents.</i>	<i>Pounds.</i>			<i>Cents.</i>	<i>Pounds.</i>
Turpentine.....	2	57	7.5	Cottonseed oil.....	3	7	.....
Osio oil.....	2	155	10.8	Lubricating oil.....	3	15	.....
Rapeseed oil.....	2	60	8	Creosote oil.....	3	13.5	10.3
Sanctuary oil.....	2	88	8	Glucose.....	4	29	.....
Linseed oil.....	3	61	9	Molasses.....	4	50	12.2

In connection with these comparisons, no evidence was submitted showing the character and volume of the movement, susceptibility of the liquid to damage to itself or other freight, and style and weight of the containers, nor any of the other elements generally considered in determining the proper classification of liquids. As stated, the second-class rating on flavoring sirups in less than carloads was based largely on the element of value, but the wide range of values of similarly rated liquids shown in the above table indicates that that element was not the determinative factor in their classification. On the other hand, reference to the current western classification shows that the style of the container used is considered a very important factor. Of the 10 liquids named in the foregoing table 8 are classified as being shipped in less than carloads in more than one style of container, and of these 8 liquids so classified 6 are given a lower rating in bulk in barrels than in glass. Under the general head of sirup the classification carries four different descriptions of sirups that are shipped in less than carloads, in more than one kind of container, and flavoring sirup is the only one which is charged the same rating in bulk in barrels as in glass. Under the general heading of oils the classification carries 30 different descriptions of oils that are shipped in more than one style of container, 16 of which carry ratings in glass and in bulk in barrels, and of these 16, 13 are rated lower in bulk in barrels than in glass. The same thing is true of other liquids such as acids, extracts, liquors, spirits, petroleum and petroleum products, and mineral waters. Defendants' witness admitted that in the classification of liquids a lower rating is generally made on shipments in bulk in barrels than in glass. He further admitted that the risk in handling flavoring sirups in barrels as compared with handling in glass or earthenware justifies a difference of one class in the rating.

In the southern classification flavoring sirups in less than carloads are classified first class in carboys, second class in glass or earthenware packed in barrels or boxes, and third class in metal cans in barrels or boxes and in bulk in barrels. In the official classification they are rated first class in glass or earthenware packed in barrels or boxes and second class in metal cans in barrels or boxes and in bulk in barrels. It is thus seen that in the southern and the official classification territories a lower rating is made on shipments in bulk in barrels than on shipments in glass or earthenware.

Complainant calls attention to the western classification ratings on simple sirup and coloring sirup. Simple sirup is a mixture of sugar and water, and moves under the head of sirups, not medicated, not otherwise indexed by name, which are classified third class in fiber cans or cups packed in boxes, and fourth class in bulk in barrels, and in other containers. Coloring sirup is simple sirup boiled until it is browned and made into a caramel sirup. It is rated first class in glass or earthenware packed in barrels or boxes, second class in metal cans completely packed, and third class in bulk in barrels. Complainant's product is 94 per cent simple sirup which, unflavored, is rated fourth class in bulk in barrels.

Comparisons with the ratings, value, and weight of other commodities were also submitted by complainant, but it is not deemed necessary to analyze them.

Complainant requests that we frame a classification description and prescribe a rating for flavored sirups which would differentiate them from flavoring sirups. It is pointed out that four times as much flavored sirup as flavoring sirup is necessary to make a given amount of beverage as dispensed to the consumer, but it does not necessarily follow that the total movement of flavored sirups is greater than that of flavoring sirups. Moreover, flavoring sirups are heavier than flavored sirups, and have about the same general range of values. On the other hand, flavoring sirups are shipped principally in glass, whereas flavored sirups are shipped largely in bulk in barrels or kegs. The intrinsic difference in the two kinds of sirup does not justify a difference in their classification rating.

Upon consideration of all the facts of record we find that defendants have not justified the increased classification rating on Coca Cola sirup in less than carloads when shipments are made in bulk in barrels or kegs, but that they have justified the increased rating when shipments are made in other containers. We further find and conclude that third class is and for the future will be a just and reasonable rating to apply on less-than-carload shipments of sirup in bulk in barrels or kegs. Upon the facts disclosed of record reparation is denied. An order will be entered accordingly.

No. 8630.

SCHRAM GLASS MANUFACTURING COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted May 5, 1916. Decided March 13, 1917.

Rates on strawboard boxes, fillers, and partitions in carloads from St. Louis, Mo., Baltimore, Ohio, and Vincennes, Ind., to Sapulpa, Okla., found to have been unreasonable. Reparation awarded.

X. G. Buehler for complainant.

Robert N. Nash for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of glass articles, with its principal office at St. Louis, Mo. By complaint, filed January 17, 1916, it alleges that the charges collected by defendants for the transportation of 21 carloads of corrugated strawboard boxes, fillers, and partitions, shipped from Baltimore, Ohio, Vincennes, Ind., and St. Louis, Mo., to Sapulpa, Okla., between January 24 and March 28, 1914, inclusive, were unreasonable and unjustly discriminatory. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved over defendants' lines and charges were collected at rates of 44 cents from St. Louis, 63 cents from Baltimore, and 54.5 cents from Vincennes, minimum 30,000 pounds. The rate from St. Louis also applied from East St. Louis, Ill. The rates from Baltimore and Vincennes were based on the East St. Louis combinations. The components east of East St. Louis were 19 cents from Baltimore and 10.5 cents from Vincennes. On March 29, 1914, rates were established to Sapulpa of 36 cents from St. Louis and East St. Louis, 55 cents from Baltimore, and 46.5 cents from Vincennes. Complainant contends that the rate of 44 cents from St. Louis on shipments from that point, and the same rate from East St. Louis as components of the through rates from Baltimore and Vincennes, were unreasonable to the extent that they exceeded 36 cents. Defendants admit the unreasonableness of the rates charged and are willing to make reparation on basis of the subsequently established rates.

Prior to the completion of complainant's plant at Sapulpa, in January, 1914, there was no movement of the commodities involved to that point. In anticipation of the construction of its plant at Sapulpa, complainant requested the establishment of rates to Sapulpa in line with rates maintained to competing manufacturing points. The shipments in question, however, moved before the realignment could be brought about.

Corrugated strawboard boxes, fillers, and partitions are manufactured at Lawrence, Kans. For rate-making purposes Lawrence is usually considered as being in Kansas City territory with respect to traffic to Oklahoma. When the shipments moved the rate on corrugated strawboard boxes, in carloads, from Lawrence to Sapulpa was 28 cents, and complainant observes that it is fair to assume that had strawboard boxes been manufactured at Kansas City, the 28-cent rate would have applied from that point to Sapulpa. Thus a differential of 16 cents was represented in the rate from St. Louis over the constructive rate from Kansas City. From tariffs on file with us, however, we note that the present rate from Kansas City to Sapulpa is 31 cents. Strawboard boxes, by exception to the western classification, are rated fifth class. Similarly rated articles are: Bagging, canned goods, coffee, egg-case fillers and egg cases, paints, cast-iron pipe and fittings, and stoves. It is shown that on these articles differentials of from 4 cents to 10 cents prevail in the commodity rates from St. Louis over the commodity rates from Kansas City, the average differential being approximately 5 cents.

There is in effect on wooden boxes and wooden partitions from Alton, Ill., to Sapulpa, a rate of 28 cents, minimum 16,000 pounds, when in cars 40 feet and under in length, and 20,000 pounds when in cars over 40 feet in length. The same rate and minima apply from St. Louis. Fifteen of the shipments involved moved from St. Louis to Sapulpa, 438 miles, and the average weight was 39,973 pounds. The 44-cent rate charged on these shipments yielded \$175.88 per car, 40 cents per car-mile, and 20 mills per ton-mile. On a shipment weighing 39,973 pounds the present rate of 36 cents from St. Louis to Sapulpa would yield \$143.90 per car, 32.9 cents per car-mile, and 16 mills per ton-mile. When the shipments moved rates of 32 cents and 33 cents were in effect from St. Louis to Coffeyville, Kans., and Fort Smith, Ark., respectively. Using the average weight of the shipments as shown above, the 33-cent rate from St. Louis to Fort Smith, 416 miles, yields \$131.91 per car, 31.7 cents per car-mile, and 15.9 mills per ton-mile.

Upon all the facts of record we find that the rate charged on the shipments from St. Louis was unreasonable to the extent that it exceeded 36 cents per 100 pounds, and that the rates charged on the

shipments from Baltimore and Vincennes were unreasonable to the extent that the portions thereof applicable to the transportation from East St. Louis to Sapulpa exceeded 36 cents per 100 pounds.

We further find that in so far as complainant has paid freight charges on the shipments in question upon the basis herein found unreasonable, it has been damaged to the extent that such charges exceeded those which would have accrued at the rates herein found reasonable, and that complainant is entitled to reparation accordingly. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

45 I. C. C.

No. 8636.

DALLAS COOPERAGE & WOODENWARE COMPANY
v.
GULF, COLORADO & SANTA FE RAILWAY COMPANY
ET AL.

Submitted June 26, 1916. Decided June 27, 1917.

Minimum weight of 20,000 pounds applicable to slack barrels in carloads from Dallas and Oak Cliff, Tex., to certain Oklahoma points, found unreasonable to the extent that it exceeds and may exceed 10,000 pounds for 36-foot cars, subject to rule 6-B of the western classification.

J. A. Morgan for complainant.

T. J. Norton, F. R. Dalzell, and *Drew Head* for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

Thomas Bond for St. Louis & San Francisco Railroad Company and its receivers; St. Louis, San Francisco & Texas Railway Company and its receivers; and Paris & Great Northern Railroad Company.

C. S. Burg and *J. F. Garvin* for Missouri, Kansas & Texas Railway Company; and Missouri, Kansas & Texas Railway Company of Texas and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of wooden barrels at Dallas and Oak Cliff, Tex. By complaint, filed February 7, 1916, as amended, it alleges that the carload minimum of 20,000 pounds, maintained by defendants on slack barrels in connection with a commodity rate of 30 cents per 100 pounds from Dallas and Oak Cliff to numerous Oklahoma points, shown in item No. 1576 of supplement No. 24 to agent Leland's tariff, I. C. C. 1048, is unreasonable, and that it is unjustly discriminatory as compared with the same minimum maintained on tight barrels from and to the same points. The establishment of a minimum weight of 10,000 pounds for 36-foot cars, 11,000 pounds for 40-foot cars, and 14,000 pounds for 50-foot cars is asked. Rates are stated in cents per 100 pounds.

Slack barrels are used for dry materials and tight barrels for liquids. The rate of 30 cents, minimum 20,000 pounds, applies on

these barrels from Dallas and Oak Cliff to numerous points in Oklahoma on the Missouri, Kansas & Texas Railway and the St. Louis & San Francisco Railroad for distances ranging approximately from 93 miles to 282 miles. The western classification, which governs traffic from and to these points, rated and rates slack barrels, in carloads, minimum 14,000 pounds, subject to rule 6-B, class B. The class B rates from and to these points range from 22 cents to 42 cents. The tariff publishing the 30-cent commodity rate provides for the alternative application of the class B rate, whichever makes the lower charge.

The record discloses that the average maximum loading of slack barrels is 7,234 pounds in 36-foot cars, 10,525 pounds in 40-foot cars, and 12,383 pounds in 50-foot cars; of tight barrels, approximately twice that of slack barrels. It is admitted by defendants that 20,000 pounds of slack barrels can not be loaded in any car which they are able to furnish. They urge that, since it is practically impossible in the transportation of light and bulky articles, such as slack barrels, to determine minima which will absolutely conform to the actual loading, the adoption of an arbitrary minimum is necessary to protect the carriers from an unduly low charge for a carload movement. They insist that the charges at the 30-cent rate and 20,000-pound minimum are reasonable and numerous comparisons were submitted which tend to support this contention. From Dallas to Sapulpa, Okla., 282 miles, the present rate and minimum yields a per car revenue of \$60 and a per car-mile revenue of 21.3 cents; based on a minimum of 10,000 pounds the 30-cent rate would yield a per car revenue of \$30 and a per car-mile revenue of 10.6 cents. Defendants point to the minimum of 20,000 pounds maintained by them to this Oklahoma territory from points in Missouri, at which slack barrels are manufactured, applicable in connection with rates on slack barrels, that, for shorter distances, are as high as those maintained from Dallas and Oak Cliff.

We have heretofore held, in considering an issue similar to that here presented, that ordinarily carload minimum weights should be established with reference to the loading capacity of the car; and that if carriers desire to protect themselves from unremunerative charges per car they should do so by regulating the rate and not by prescribing minimum weights which manifestly can not be loaded. *Riverside Mills v. G. R. R.*, 25 I. C. C., 434.

Slack and tight barrels obviously do not compete with each other, and the allegation of discrimination, based merely on a showing that identical minima are maintained on the two commodities, can not be sustained.

We find that the minimum of 20,000 pounds assailed is and for the future will be unreasonable to the extent that it exceeds and may exceed 10,000 pounds for 36-foot cars, subject to rule 6-B of the western classification.

An appropriate order will be entered.

No. 8720.

GRAVES BROTHERS COMPANY

v.

APALACHICOLA NORTHERN RAILROAD COMPANY
ET AL.

Submitted September 28, 1916. Decided June 25, 1917.

Rate on lumber in carloads from Hosford, Fla., to Pensacola, Fla., for export, found to have been unreasonable. Reparation awarded.

W. E. Gardner for complainants.

T. M. True for Apalachicola Northern Railroad Company.

Edward D. Mohr for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are W. F. Graves and J. E. Graves, copartners, engaged in the lumber business at Hosford, Fla., under the firm name of Graves Brothers Company, and are the successors in interest of the Graves Lumber Company. By complaint, filed March 11, 1916, it is alleged that the rate charged by defendants for the transportation of 22 carloads of lumber from Hosford to Pensacola, Fla., for export, during the period from June 26, 1914, to July 14, 1914, inclusive, was unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved from Hosford by way of the Apalachicola Northern Railroad to River Junction, Fla., 26 miles, thence by way of the Louisville & Nashville Railroad to Pensacola, 162 miles, from which point they were exported to Europe. Charges were collected in the sum of \$1,225.97, based on a weight of 1,167,600 pounds and a combination commodity rate of 10½ cents, composed of interstate components of 5 cents to River Junction and 5½ cents beyond.

Complainants contend that the rate charged was unreasonable to the extent that it exceeded joint rates contemporaneously and at present in effect of 9 cents from Hosford to Jacksonville and Fernandina, Fla., and 10 cents from Hosford to Savannah, Ga., 234, 263, and 284 miles, respectively. On all of the shipments from complainants' mill at Hosford complainants spot the cars with their own motive power, taking empty cars from and delivering loaded ones to the Apalachicola Northern. Transportation conditions from Hosford to River Junction are identical on shipments to Pensacola, Jacksonville, Fernandina, or Savannah.

Prior to June 11, 1914, a combination rate of 8½ cents, minimum 24,000 pounds to River Junction and 30,000 pounds beyond, was applicable on lumber and timber from Hosford to Pensacola, made up of rates of 3¼ cents to River Junction and 5½ cents beyond. On the above date the through rate from Hosford to Pensacola was increased to 10½ cents by an increase from 3¼ cents to 5 cents in the rate from Hosford to River Junction. The burden of justifying the increased rate rests upon the defendants.

On June 30, 1915, defendants established a joint rate of 9 cents, minimum 30,000 pounds, from Hosford to Pensacola. The Apalachicola Northern admits that the rate charged was unreasonable to the extent that it exceeded 9 cents, and offered to make reparation. The Louisville & Nashville contends that the 10½-cent rate was not unreasonable, but was in fact depressed by water competition.

Complainants urge that the increased rate forced them to retire from the Pensacola market and discriminated against them in that the rates of their competitors located at Aycock and Caryville, Fla., 123 and 100 miles, respectively, from Pensacola, and other points on the Pensacola & Atlantic division of the Louisville & Nashville, remained unchanged and that there is no justification for the maintenance of higher rates to Pensacola than to Jacksonville. A wharfage charge of 1½ cents in addition to the rate to Jacksonville is assessed on shipments moving by water from that point. Prior to December 23, 1916, the 9-cent rate to Pensacola included ship-side delivery. Effective on that date a wharfage and handling charge of 1 cent was published applicable except on shipments of lumber from interior points by way of the Louisville & Nashville. Effective March 14, 1917, the exception as to the Louisville & Nashville was eliminated. This had the effect of making a 1-cent wharfage charge at Pensacola on all export shipments of lumber handled by this defendant.

The Apalachicola Northern, in justification of the increase in its interstate local rate from 3¼ to 5 cents, states that prior to the time it published the commodity rate of 5 cents it applied the Florida

class P scale of rates interstate, and that these rates were unreasonably low and were published under protest. It admits, however, that the 5-cent commodity rate was published for the purpose of protecting itself in the division of joint rates, and not for the purpose of increasing through rates to the shipper. The Louisville & Nashville submitted a number of exhibits; some for the purpose of showing that its rates from River Junction to Pensacola are depressed by water competition, and others for the purpose of showing that the 10½-cent rate compares favorably with rates on lumber in other parts of the south. It is unnecessary to refer to them in detail, as they do not clearly show that water competition has affected the rate attacked, and in respect of the exhibits of comparative rates, it does not appear that the circumstances and conditions surrounding them are substantially similar to those incident to the rate assailed.

We find that defendants have not sustained the burden of justifying the increased rate; that the rate assailed was unreasonable to the extent that it exceeded 9 cents per 100 pounds; that complainants and their predecessor made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that complainants are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

45 I. C. C.

No. 8840.

GEORGE F. BOWLING

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF
TEXAS ET AL.

Submitted September 23, 1916. Decided June 15, 1917.

Charges on a cook shack and contents from Collinsville, Tex., to Frederick, Okla., not shown to have been unreasonable. Complainant found to have been overcharged, and reparation awarded.

George F. Bowling for complainant in person.

A. J. Stone for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Collinsville, Tex. By complaint, filed April 8, 1916, he alleges that the charges assessed by defendants for the transportation of a cook shack and contents from Collinsville to Frederick, Okla., in July, 1915, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The cook shack and contents were a part of a larger shipment consisting of a traction engine, separator, and parts thereof, loaded on one flat car; and a water tank, used in connection with the traction engine, cook shack and contents loaded on a second flat car. Complainant ordered a 50-foot car for the entire shipment, but the initial carrier could not furnish a car of that size and, for its own convenience, furnished two cars each 34 feet in length. The shipment moved over the lines of the Missouri, Kansas & Texas Railway Company of Texas and the Wichita Falls & Northwestern Railway. Traffic from Collinsville to Frederick is governed by the western classification, and charges were collected on the traction engine, separator and parts thereof in the sum of \$102.12 based on the class A rate of 37 cents, and weight of 27,600 pounds; on the water tank in the sum of \$12.34, based on the first-class rate of 63 cents, and a weight of 1,960 pounds; and on the cook shack and contents in the sum of \$38.93, based on one and one-half times the first-class rate, or 94½ cents, and a weight of 4,120 pounds. The minimum weight on traction engines applicable to cars of the length ordered was 28,400 pounds. The classification provided that with shipments of traction engines, carloads, there may be included one tank for each engine at the engine rating and minimum weight. Under this provision and a

further rule in the classification, where a large car is ordered and two smaller cars are furnished for convenience of carrier, the charges on the water tank should have been included under the carload rate and minimum weight applicable to the traction engine. It follows that the complainant has been overcharged \$5.09. The only charges attacked are those which accrued on the cook shack and contents. The rating applied to them, and not the class rates themselves, is attacked.

The cook shack was described as a frame structure 7 by 16 by 6 feet, covered with sheet iron and set on trucks. It was used as an improvised kitchen, the sides of the structure being hung on hinges. In loading it onto the car, the trucks were removed and the shack secured to the floor of the car by means of blocks. The contents of the shack consisted of a cookstove, tin plates, knives, forks, tin cups, buckets, and cooking utensils, all packed in boxes. The value of the shack and contents was about \$100.

Defendants classified the shack as a "portable house" and its contents as "household goods, value not stated," both of which were rated one and one-half times first class. The complainant contends that the shack should not have been rated higher than first class and that the contents should also have been given the first-class rating provided in the classification for "camp cooking outfits." The basis for the contention that a first-class rating should have been applied to the cook shack is not shown. The "camp cooking outfit" rating was limited to "utensils inclosed in iron or steel cabinets or frames, in boxes or crates," and therefore was inapplicable, as the contents of the cook shack were only packed in boxes.

We find that the cook shack and contents were properly rated as "portable house" and "household goods, value not stated," respectively, and that the rate of 94½ cents per 100 pounds legally applicable thereon is not shown to have been unreasonable, but that the charges collected upon the water tank were illegal to the extent that they exceeded the charges that would have accrued at 37 cents per 100 pounds. We further find that the complainant made the shipment as described, and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate legally applicable; and that he is entitled to reparation in the sum of \$5.09, with interest.

An appropriate order will be entered.

No. 9022.

GERMAN AMERICAN SUGAR COMPANY

v.

CINCINNATI NORTHERN RAILROAD COMPANY ET AL.

Submitted November 13, 1916. Decided June 25, 1917.

Rate on limestone in carloads from Keepport, Ind., to Paulding, Ohio, found to have been and to be unreasonable. Reparation awarded.

A. N. Wilcox for complainant.

R. D. Hunter for Cincinnati Northern Railroad Company.

H. R. Brashear for Wabash Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of beet sugar at Paulding, Ohio. By complaint, filed July 8, 1916, it alleges that rates of \$1.80 and \$1.90 per net ton charged by defendants on 41 carloads of crushed limestone shipped from Keepport, Ind., to Paulding, during the period from October 3, 1914, to November 9, 1914, inclusive, were unreasonable to the extent that they exceeded 93 cents per net ton. Reparation is asked. Rates are stated in amounts per net ton.

Keepport is a local station on the Wabash Railway; Paulding is a local station on the Cincinnati Northern Railroad. The shipments moved over defendants' lines, a distance of 109 miles. Charges were assessed on some of the shipments at the sixth-class rate of \$1.80, legally applicable; on later shipments at a rate of \$1.90, the sixth-class rate having been increased to that amount following *The Five Per Cent Case*, 31 I. C. C., 351. Complainant states that this stone moves in gondola cars, and that the average carload is about 85,000 pounds. The \$1.90 rate yields earnings per ton-mile of 1.74 cents and per car and per car-mile, based on the average loading mentioned, of \$80.75 and 74 cents, respectively.

On November 12, 1914, the Wabash, with authority of the Cincinnati Northern, published a commodity rate of 93 cents on this traffic from Keepport to Paulding showing the Cleveland, Cincinnati, Chicago & St. Louis Railway as concurring in the rate instead of the Cincinnati Northern. This situation continued until January 13, 1917, when it was corrected by substituting the Cincinnati Northern for the Cleveland, Cincinnati, Chicago & St. Louis. The Wabash

testified that the failure to show the Cincinnati Northern as a participating carrier was due solely to an error in constructing the tariff. It appears that this error was not discovered until shortly prior to the hearing in this case, and that previous to that time both the Wabash and the Cincinnati Northern were under the impression that the 93-cent rate had been properly established.

Complainant testified that on July 31, 1914, defendants were requested to establish a commodity rate on this traffic and that they promised to do so. Defendants corroborated this statement and explained that the failure to publish the 93-cent rate more promptly was due to a discussion between themselves as to divisions. They testified that it is practically the universal practice of carriers in central freight association territory to maintain commodity rates on crushed stone lower than the sixth-class rates wherever there is a movement, and cited, by way of comparison, numerous commodity rates on crushed stone from points in Indiana to points in Ohio, and from points in Illinois to points in Indiana, for distances similar to that here involved, which tend to establish the unreasonableness of the rate charged and the reasonableness of the 93-cent rate. Defendants express willingness to make the reparation asked.

Upon the record we find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed 93 cents per net ton; that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 9040.

CHICAGO PORTLAND CEMENT COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted December 1, 1916. Decided June 21, 1917.

Rate on nut punchings in carloads from Allegheny, Pa., to Oglesby, Ill., found to have been illegal. Reparation awarded.

Fred C. Dumbek for complainant.

James Stillwell for Pennsylvania Company, and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the cement business at Oglesby, Ill. By complaint, filed July 12, 1916, it alleges that the rate of $20\frac{1}{2}$ cents per 100 pounds charged by defendants on a carload of nut punchings shipped July 28, 1914, from Allegheny, Pa., to Oglesby, was unreasonable and unduly prejudicial to the extent that it exceeded $15\frac{1}{2}$ cents per 100 pounds contemporaneously applicable on grinding pebbles in bulk. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 98,900 pounds, consisted of iron nut punchings used for grinding purposes. It was loaded in bulk and moved over the lines of the Pennsylvania Company and Illinois Central Railroad. No specific rate or rating was or is in effect on nut punchings, and under rule 23 of the official classification covering articles not specifically provided for therein charges were collected in the sum of \$202.75 at the fifth-class rate of $20\frac{1}{2}$ cents applicable on—

Pebbles, iron, grinding or polishing, in bags, bbls. or boxes (c. l. min. wt. 40,000 lbs.) fifth class.

Complainant does not allege that the rate charged was unreasonable *per se*, but rather that the improper rating was applied. In item No. 1, page 225, of this classification "pebbles, grinding, n. o. s., in bulk, min. wt. 40,000 lbs." were rated sixth class. In defendants' exceptions to the official classification a rate of $15\frac{1}{2}$ cents applied on "pebbles, grinding, in bulk, c. l. min. wt. 40,000 lbs."

Complainant insists that as the shipment in issue was in bulk it was entitled to the 15½-cent rate under the above-quoted provisions in the exceptions.

Defendants state that neither the provision in the classification for "pebbles, n. o. s." nor in the exceptions for "pebbles, grinding" was intended to cover such an article as that here in issue, and that regardless of the fact that the shipment was in bulk the rating provided for shipments in barrels, bags, or boxes was properly applicable. In support of this it is shown that subsequently to the time the shipment moved the item last mentioned was changed so as to include specifically shipments in bulk; also that the exception referred to was altered to read "flint pebbles," thus excluding iron pebbles.

The Commission has repeatedly held that tariffs are to be construed according to their language, and that the intention of the framers is not controlling. The word "pebbles" in the exception to the classification quoted was unrestricted, and iron pebbles in bulk, in carloads, were clearly entitled to the 15½-cent rate. Considering their nature and use, iron nut punchings are similar to iron pebbles. The exceptions were governed by the rules and regulations of the classification, unless otherwise specifically provided. In the absence of specific rules in the exceptions nut punchings were entitled to the 15½-cent rate under the analogous article rule.

We find that the 15½-cent rate applicable on pebbles in bulk should have been applied to the shipment in question; that complainant made the shipment as described and paid and bore the charges thereon at a rate in excess of the tariff rate legally applicable; that it has been damaged to the extent that such charges exceeded those legally applicable, and that it is entitled to reparation in the sum of \$49.75, with interest. No order for the future will be issued, but the official classification should be amended to name specifically iron nut punchings.

An appropriate order will be entered.

45 I. C. C.

No. 9173.

E. I. DU PONT DE NEMOURS POWDER COMPANY

v.

PHILADELPHIA, BALTIMORE & WASHINGTON
RAILROAD COMPANY ET AL.

Submitted April 21, 1917. Decided June 21, 1917.

Rate on slag and refuse in carloads from Chester, Pa., to Carney's Point, N. J., found to have been and to be unreasonable. Reparation awarded.

Harvey S. Farrow for complainant.

Henry Wolf Bickl  for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of explosives, with its principal office at Wilmington, Del. By complaint, filed September 12, 1916, it alleges that the sixth-class rate of 12.6 cents per 100 pounds charged by defendants for the transportation of 88 carloads of slag and refuse from Chester, Pa., to Carney's Point, N. J., during the period from August 23, 1915, to September 25, 1915, inclusive, was unreasonable to the extent that it exceeded the subsequently established commodity rate of 85 cents per net ton. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in amounts per net ton unless otherwise indicated.

The shipments moved over defendants' lines through Philadelphia, Pa., and charges were collected at the sixth-class rate of 12.6 cents per 100 pounds, legally applicable. The distance from Chester to Carney's Point is shown in defendants' tariffs as 73.8 miles, which includes 30 miles constructive mileage for the use of the bridge across the Delaware River at Philadelphia. The rate charged yielded earnings of 3.41 cents per ton-mile, and, based on 66,000 pounds, the average loading of the shipments in issue, \$83.16 per car and \$1.127 per car-mile. On October 18, 1915, at complainant's request, defendants established a commodity rate of 85 cents. This rate was canceled February 1, 1917, since which date the sixth-class rate has applied.

The material constituting these shipments was used for filling and grading and was of very low grade and value. Complainant showed

that it is the practice of the carriers to accord it commodity rates lower than sixth class, and referred to *Du Pont de Nemours Powder Co. v. P. & R. Ry. Co.*, 43 I. C. C., 1. That case involved shipments of ashes, cinders, and foundry dirt, used for the same purposes as the material here under consideration, which moved from points in Pennsylvania and Delaware to Carney's Point at the sixth-class rates. We there awarded reparation upon the basis of subsequently established commodity rates ranging from 60 cents for 30 miles to \$1 for 104 miles, saying:

It was shown that coal ashes, cinders, and foundry dirt are articles of little or no intrinsic worth, and that they ordinarily move only to points at which construction of some kind is going on. Their movement in large quantities is sporadic. When the construction at a given point is completed, ordinarily the movement to such a point ceases. They rarely can move, or do move, on class rates for the reason that ordinarily, and unless some low basis of rates is provided, some other material will be substituted.

Defendants conceded that if there was a continuing movement of this material from Chester to Carney's Point a reasonable rate for the service would be \$1.05, and that they would probably maintain commodity rates, but argue that this is not a proper case for the establishment of a commodity rate, as the movement is sporadic, as indicated by the fact that there have been no shipments since those here involved. They assert that the commodity rate established after these shipments moved was unreasonably low, and cited a rate of 89 cents on ashes and cinders from Philadelphia to Carney's Point, a distance of 61 miles, and numerous rates on similar commodities in this general territory ranging from 95 cents for 60 miles to \$1.36 for 127 miles.

We find that the rate assailed was, is, and for the future will be, unreasonable to the extent that it exceeded and may exceed a rate of 95 cents per net ton; that complainant made the shipments as described, and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 9042.

SUNDERLAND BROTHERS COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted January 2, 1917. Decided June 25, 1917.

Rate legally applicable on a carload of brick from Chanute, Kans., to Woolstock, Iowa, found not to have been unreasonable. Complaint dismissed.

H. S. Colvin for complainant.

C. B. Ackerman for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in buying and selling fuel and building material at Omaha, Nebr. By complaint, filed June 15, 1916, it alleges that the charges assessed by defendants at a rate of 17.5 cents per 100 pounds on a carload of brick shipped June 1, 1914, from Chanute, Kans., to Woolstock, Iowa, are unreasonable to the extent that they exceed charges that would accrue at a rate of 12 cents per 100 pounds, and that they are in excess of charges that would accrue at the aggregate of the intermediate rates to and from Eagle Grove, Iowa. The Commission is asked to direct waiver of outstanding undercharges and to authorize collection of charges on basis of the 12-cent rate. The claim was presented to the Commission informally May 31, 1916. Rates are stated in cents per 100 pounds.

The shipment weighed 65,400 pounds and moved over the Atchison, Topeka & Santa Fe Railway to St. Joseph, Mo.; Chicago Great Western Railroad to Eagle Grove; and Chicago & North Western Railway to destination. Charges were collected in the sum of \$65.40 at a rate of 10 cents, for which rate there was no tariff authority. Defendants subsequently concluded that a joint class E rate of 17.5 cents, governed by the western classification, was legally applicable and made demand upon complainant for alleged undercharges, which have not been paid. The combination rate, based on Eagle Grove, contemporaneously in effect on this traffic was 13 cents, composed of a commodity rate of 10 cents, minimum 50,000 pounds, from Chanute to Eagle Grove, and an interstate distance commodity rate of 3 cents, minimum 50,000 pounds, beyond. On Novem-

ber 1, 1914, the component to Eagle Grove was increased to 12.5 cents, and the combination has since been 15.5 cents. An inspection of the tariffs on file with the Commission discloses that the 17.5-cent rate was inapplicable to the shipment in controversy; and that the 13-cent combination on Eagle Grove was legally applicable. The shipment was undercharged \$19.62.

No evidence was adduced to show that the rate legally applicable was intrinsically unreasonable.

We find that the rate legally applicable is not shown to have been unreasonable, and the complaint will be dismissed. We can not relieve complainant from the obligation to pay the lawful charges.

An appropriate order will be entered.

No. 9061.

POWELL RIVER COMPANY, LIMITED,

v.

MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

Submitted December 29, 1916. Decided July 5, 1917.

Rate on sulphate of alumina in carloads from Wyandotte, Mich., to Powell River, British Columbia, found unreasonable. Reparation awarded.

S. J. Wettrick for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a Canadian corporation engaged in manufacturing news print paper, with its principal place of business at Powell River, British Columbia. By complaint, filed July 25, 1916, it alleges that the rate of \$1.92½ per 100 pounds charged by defendants on two carloads of sulphate of alumina shipped from Wyandotte, Mich., to Powell River, in December, 1914, was and is unreasonable to the extent that it exceeded and exceeds 87 cents, and is unjustly discriminatory as compared with a rate of 74½ cents contemporaneously maintained to Millwood, Wash. Reparation is asked and a reasonable rate for the future. Rates are stated in amounts per 100 pounds.

The shipments, each of which weighed 40,000 pounds, moved from Wyandotte over the Michigan Central Railroad to Chicago, Ill., Minneapolis, St. Paul & Sault Ste. Marie and Canadian Pacific railways to Vancouver, British Columbia, and thence to Powell River, by way of the Kingcome Navigation Company, Limited. No commodity rate applied and charges were collected in the sum of \$1,540 at the joint through fifth-class rate of \$1.92½ legally applicable, governed by the western classification.

Sulphate of alumina, otherwise known as alum, is a crude dried salt, yellow in color, containing about 3 per cent iron, and may be shipped in barrels or sacks. It is a low-grade commodity not susceptible to damage in transit.

Complainant shows that for some time prior to November 15, 1914, there was in effect from Wyandotte to Powell River a commodity rate of 87½ cents on alum, crude or refined, in carloads, minimum 40,000 pounds, and that on October 18, 1915, the defendants established a rate of 82 cents on sulphate of alumina, paper maker's alum, in carloads, minimum 40,000 pounds. On February 10, 1916, this rate was increased to 87 cents. This latter rate, which is the combination of locals based on Chicago, is still in effect. It is further shown that during the period when the class rate was applicable on this commodity to Powell River, a combination rate of 74½ cents was maintained to Millwood at which point a news print mill, with which complainant competes, is located. This latter rate is still in effect. The class rate charged represents an increase since January 1, 1910, and the burden of proving it reasonable rests upon defendants. None of the defendants appeared at the hearing.

We find that defendants have failed to justify the increased rate assailed, which is therefore found unreasonable to the extent that it exceeded the commodity rate of 87½ cents per 100 pounds formerly in effect; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$840, with interest.

An order awarding reparation will be entered, but as a rate not in excess of the rate herein found reasonable has been in effect for more than a year, no order for the future is necessary.

45 I. C. C.

No. 9091.

RUB-NO-MORE COMPANY

v.

CINCINNATI, HAMILTON & DAYTON RAILWAY
COMPANY ET AL.

Submitted January 4, 1917. Decided June 25, 1917.

Rate on cottonseed oil in tank-car loads from Fort Wayne, Ind., to Ivorydale, Ohio, not found to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

O. W. Seibert, H. E. Fairweather, and E. W. Cox for complainant.
H. D. Palmer for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in manufacturing soap and washing powder at Fort Wayne, Ind. By complaint, filed August 5, 1916, it alleges that the fifth-class rate of 12.6 cents per 100 pounds charged by defendants on eight tank-car loads of cottonseed oil, shipped from Fort Wayne to Ivorydale, Ohio, in February, March, and May, 1915, were unreasonable, unjustly discriminatory, and unduly prejudicial, as compared with the rates contemporaneously maintained on like traffic from Chicago, Ill., and Milwaukee, Wis., to Ivorydale. Reparation is asked and the establishment of nondiscriminatory rates for the future. Rates are stated in cents per 100 pounds.

Fort Wayne is located in northern Indiana about 150 miles east of Chicago and about 165 miles north of Cincinnati, Ohio. Ivorydale is within the switching limits of Cincinnati.

The shipments apparently moved over defendants' lines. In the absence of a commodity rate charges were properly collected at the fifth-class rate of 12.6 cents, governed by the official classification. This rate still applies. When the shipments moved defendants were parties to commodity rates on cottonseed oil in tank-car loads to Ivorydale of 12.6 cents from Chicago and 14.7 cents from Milwaukee. These rates were equal to the corresponding sixth-class rates from and to the same points. Effective January 1, 1917, those commodity rates were canceled and fifth-class rates of 15.8 cents from Chicago and 17.9 cents from Milwaukee now apply on cottonseed oil in car loads from these points to Ivorydale.

Complainant's claim for reparation and request for future rates based on the sixth-class rate of 10 cents from Fort Wayne to Ivorydale are founded solely on the ground that the former commodity rates from Chicago and Milwaukee to Ivorydale were equal to the corresponding sixth-class rate. It could not specify any competition at Chicago or Milwaukee, nor state whether or not there is or had been any movement of cottonseed oil from Chicago or Milwaukee to Ivorydale. Defendants did not offer any evidence.

We find that the rates assailed are not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. An order dismissing the complaint will be entered.

No. 9108.

MERCHANTS BASKET & BOX COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted February 5, 1917. Decided June 25, 1917.

Rate on fruit and vegetable baskets in carloads from Grand Tower, Ill., to St. Louis, Mo., not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

C. H. Rodehaver for complainant.

J. H. Cherry for Illinois Central Railroad Company.

A. P. Humburg and *E. C. Kramer* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of baskets and fruit and vegetable packages, with its principal office at St. Louis, Mo. By complaint, filed August 18, 1916, it alleges that the third-class rate of 21.2 cents per 100 pounds, minimum 9,000 pounds, charged by defendants on baskets in carloads from Grand Tower, Ill., to St. Louis, is unreasonable and unduly prejudicial to the extent that it exceeds a commodity rate of 10 cents per 100 pounds, minimum 12,000 pounds. Rates are stated in cents per 100 pounds.

The baskets in question are round bushel baskets made of unscarfed veneers and are used for shipping fruits and vegetables. Grand Tower, where these baskets are manufactured by complainant, is located on the Mississippi River about 99 miles south of St.

Louis, and is a local point on the Illinois Central Railroad, hereinafter called defendant. These baskets are rated third class by the Illinois classification, minimum 12,000 pounds, but the minimum in connection with the third-class rate applicable from Grand Tower to St. Louis is 9,000 pounds, subject to rule 6-B of the western classification. Complainant stated that between 11,000 and 12,000 pounds of these baskets could be loaded in a standard car. It relied principally upon a showing that the rate on these baskets to St. Louis from Metropolis, Ill., an alleged competitive point on defendant's line, 160 miles southeast of St. Louis, was 15 cents, minimum 12,000 pounds, and that rates of 7.4 cents, minimum 30,000 pounds, apply on fruit and vegetable packages made of scarfed box material from both Grand Tower and Metropolis, to St. Louis.

The official classification rates these baskets third class, minimum 12,000 pounds, subject to rule 27; the western classification, second class, minimum 10,000 pounds, subject to rule 6-B. Defendant stated that these baskets generally move at class rates in central freight association territory and cited numerous rates on the same article in various parts of this general territory with which the rate assailed does not compare unfavorably. The rate attacked yields earnings of 19.27 cents per car-mile based on a weight of 9,000 pounds for a standard car. The 7.4-cent rate on vegetable packages yields per car-mile earnings on a minimum carload of 22.42 cents. Defendant showed that the baskets move from Grand Tower to St. Louis, principally by water and that from January 1, 1916, to September 15, 1916, only six carloads had moved by rail. Also that the 15-cent rate from Metropolis to St. Louis, cited by complainant, was established to meet a similar rate over the Chicago, Burlington & Quincy Railroad from and to the same points. This rate was canceled April 7, 1917, leaving the third-class rate of 23.5 cents to apply.

We find that the rate assailed is not shown to be unreasonable or unduly prejudicial, and an order dismissing the complaint will be entered.

No. 7304.

CITY OF MEMPHIS ET AL.

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted December 18, 1916. Decided July 3, 1917.

Upon rehearing, differentials proposed by defendants in rates on uncompressed cotton from points in Arkansas and Missouri on lines of the St. Louis, Iron Mountain & Southern Railway, St. Louis Southwestern Railway, and St. Louis & San Francisco Railroad to Memphis and St. Louis, respectively, are, with certain exceptions, approved.

T. K. Riddick and Jas. S. Davant for complainants.

Thomas Bond, E. A. Haid, A. L. Burford, Henry G. Herbel, Fred G. Wright, R. R. Lethem, and A. J. Lehman for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION UPON REHEARING.

DANIELS, *Commissioner*:

Our original report in this proceeding, 39 I. C. C., 256, dealt principally with the class and commodity rates, as a whole, between Memphis and points in Arkansas and Missouri; but it considered also, among other special matters, a complaint of unjust discrimination against Memphis and in favor of St. Louis and East St. Louis in the rates on cotton to those points from Arkansas and Missouri stations on the lines of the St. Louis, Iron Mountain & Southern Railway, St. Louis Southwestern Railway, and St. Louis & San Francisco Railroad, hereinafter termed, respectively, the Iron Mountain, the Cotton Belt, and the Frisco. Upon a showing of comparative rates and distances from points in northeastern Arkansas and southern Missouri to St. Louis and Memphis, respectively, we concluded that the then existing relationship of rates was unduly prejudicial to Memphis, and ordered defendants to revise the rates, observing a differential of not less than 10 cents per 100 pounds in favor of Memphis. Defendants petitioned for a rehearing of this portion of the case, alleging that the distances cited in our report were not fairly representative. By order dated July 3, 1916, we reopened the case for further hearing upon the question of differen-

tials, and, pending a final decision, required the defendants to publish rates on cotton to Memphis which would be no higher than rates to St. Louis for substantially equal distances. In the same order we required the three defendants named to submit within 30 days a "proposed revised scale of rates for the transportation of cotton from points in Arkansas and Missouri to Memphis and St. Louis, respectively," which would "reflect the just and reasonable differentials proposed to be observed with respect to such traffic." In response to this order new rates were filed, effective August 1, 1916, which are still in force. Proposed schedules of rates designed for permanent application were later submitted to the Commission and furnished the complainants, and were considered at a hearing held October 2 and 3, 1916.

In preparing these schedules the carriers reviewed their rates on cotton from the entire state of Arkansas and from the cotton-producing section of Missouri, and proposed changes in the rates effective prior to August 1, 1916, from approximately one-third of the stations in the territory described. The general effect of the changes proposed is to increase the present differential of St. Louis over Memphis, but the revision amounts to a general readjustment of rates, as indicated by the following summary:

	To St. Louis.				To Memphis.			
	Increases.		Decreases.		Increases.		Decreases.	
	Number of stations.	Average amount.	Number of stations.	Average amount.	Number of stations.	Average amount.	Number of stations.	Average amount.
		<i>Cents.</i>		<i>Cents.</i>		<i>Cents.</i>		<i>Cents.</i>
Iron Mountain	117	3.71	57	4.53	83	7.24	120	3.67
Cotton Belt	77	6.06	6	3.00	26	5.58	14	2.07
Frisco	222	4.96	None.	.....	182	6.15	23	3.30

The record does not show the movement from particular stations and the general revenue effect of the proposed changes is therefore unknown.

The northern boundary of the cotton-producing territory in southeastern Missouri is approximately the line of the Iron Mountain, extending from Birds Point, Mo., opposite Cairo, Ill., to Poplar Bluff, Mo., passing through Sikeston, Morehouse, and Dudley, Mo., junctions with the Frisco, and Dexter, Mo., a junction with the Cotton Belt. From these points, including Poplar Bluff, defendants' lines extend southward into Arkansas, with branches to Memphis. The following tables show the distances and proposed rates on un-

compressed cotton from stations and blocks of stations on these lines to St. Louis and Memphis, respectively:

ST. LOUIS, IRON MOUNTAIN & SOUTHERN.

From stations—	To Memphis.		To St. Louis.		Difference in mileage.	Proposed differential.
	Average distance.	Proposed rate.	Average distance.	Proposed rate.		
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>		<i>Cents.</i>
Poplar Bluff, Mo., to Texarkana, Ark.:						
Poplar Bluff to Ferguson, Mo.....	155	30	174	30	19	0
Moark to Murta, Ark.....	145	31	204	35	59	4
Walnut Ridge to Hoxie, Ark.....	154	30	226	35	72	5
Minturn to Tuckerman, Ark.....	139	30	242	40	103	10
Diaz to Newport, Ark.....	120	30	260	43	140	13
Nuckles to Bald Knob, Ark.....	103	30	277	48	173	18
Judsonia, Ark.....	96	33	292	48	196	15
Kensett to Little Rock, Ark.....	126	35	322	48	196	13
Cypress Junction to Walco, Ark.....	176	40	374	58	198	18
Etta to Saginaw, Ark.....	198	45	396	58	198	13
Elmore to Donaldson, Ark.....	200	50	398	60	198	10
Alsip to Oil City, Ark.....	204	52	402	62	198	16
Oak Leaf to Witherspoon, Ark.....	208	53	406	64	198	11
Daleville, Ark.....	212	54	410	66	198	12
Arkadelphia, Ark.....	213	55	411	66	198	11
Gum Springs to Chelsea, Ark.....	237	57	434	68	197	11
Hope to Texarkana, Ark.....	277	60	475	70	198	10
Bald Knob, Mo., to Memphis, Tenn.:						
Moore Spur to Fakes, Ark.....	81	30	297	55	216	25
Jelks to McCrory, Ark.....	70	30	304	48	234	18
Sturdevant to Norton, Ark.....	64	30	303	55	239	25
Fair Oaks, Ark.....	59	30	293	43	234	13
Hamlin to Languille, Ark.....	53	29	287	55	234	26
Le Vesque, Ark.....	41	25	285	53	244	28
Princeton to St. Francis, Ark.....	35	24	291	53	256	29
Parlin to Earle, Ark.....	29	23	297	53	268	30
Grassy Lake to Lansing, Ark.....	22	23	304	55	282	32
Crawfordsville to Almont, Ark.....	10	20	316	55	306	35

ST. LOUIS SOUTHWESTERN.

Dexter, Mo., to Texarkana, Ark.:						
Dexter to Campbell, Mo.....	179	30	192	30	13	0
St. Francis to Paragould, Ark.....	146	30	223	35	77	5
Bethel to Jonesboro, Ark.....	116	30	256	35	140	5
Gilkerson to Fisher, Ark.....	91	30	281	40	190	10
Pittfing to Wrares, Ark.....	68	30	304	40	236	10
Fair Oaks, Ark.....			312	43		
Penrose to Fargo, Ark.....	71	30	323	43	252	13
Brinkley, Ark.....	86	23	338	43	252	20
Overholt to Roe, Ark.....	97	30	349	43	252	13
Aurich to Parham, Ark.....	114	35	366	48	252	13
Stuttgart to Pine Bluff, Ark.....	138	35	389	48	251	13
Sorrels to Clio, Ark.....	168	40	419	50	251	10
Rison to Clarks, Ark.....	183	45	435	55	252	10
Fordyce, Ark.....	194	50	446	60	252	10
Thornton to Kent, Ark.....	210	50	463	60	253	10
Camden, Ark.....	224	50	476	60	252	10
Gratton to Buckner, Ark.....	246	55	498	65	252	10
Stamps to Lewisville, Ark.....	274	60	526	70	252	10
Gotham to Joella, Ark.....	281	60	533	70	252	10
Garland City, Ark.....	284	60	536	70	252	10
Mayton to McKinney, Ark.....	288	60	539	70	251	10
Genoa, Ark.....	297	60	548	70	251	10
Texarkana, Ark.....	306	60	558	70	252	10

ST. LOUIS & SAN FRANCISCO.

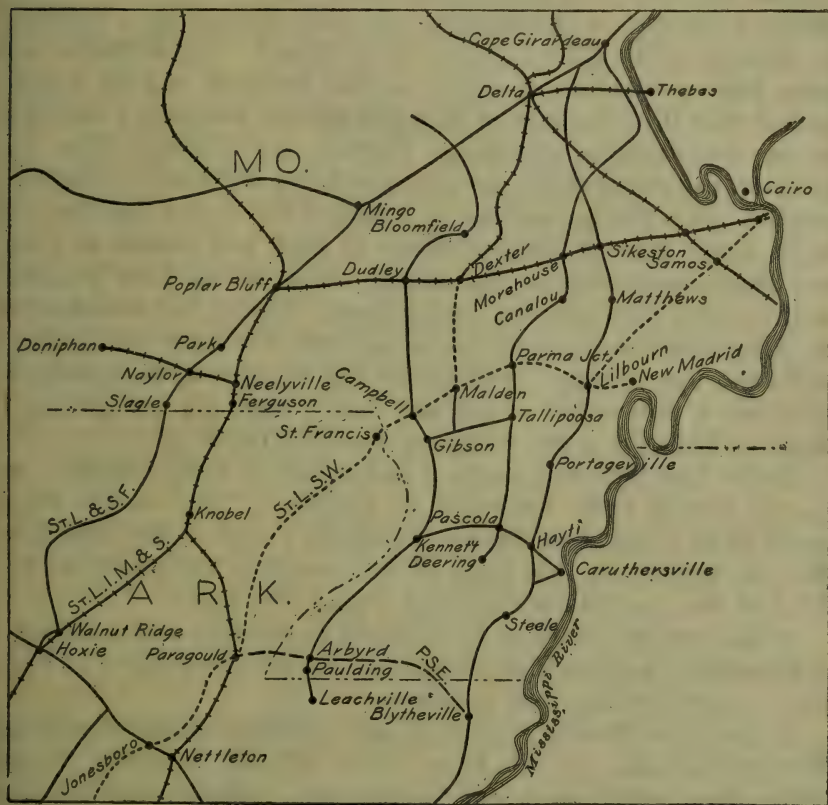
From stations—	To Memphis.		To St. Louis.		Difference in mileage.	Proposed differential.
	Average distance.	Proposed rate.	Average distance.	Proposed rate.		
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>		<i>Cents.</i>
Dudley, Mo., to Leachville, Ark.:						
Dudley to Gibson, Mo.	137	30	200	30	63	0
Holcomb to Arbyrd, Mo.	119	30	225	35	106	5
Paulding, Mo.	129	32	242	37	113	5
Charles, Mo., to Leachville, Ark.	132	35	246	40	114	5
Morehouse, Mo., to Deering, Mo.:						
Morehouse to Tallipoosa.	127	30	182	30	55	0
Tallipoosa to Deering.	102	30	208	35	106	5
Sikeston, Mo., to Deckerville, Ark.:						
Matthews to Portageville, Mo.	119	30	187	30	68	0
Burr, Mo., to Blytheville, Ark.	87	25	218	35	121	10
Archillion to Brothers, Ark.	44	23	262	35	218	12
Springfield, Mo., to Memphis, Tenn.:						
Springfield to Fordland, Mo.	270	40	250	40	20	0
Diggins to Olden, Mo.	215	35	297	40	82	5
West Plains to Thayer, Mo.	157	33	324	40	167	7
Mammoth Springs to Sloan, Mo.	121	32	295	40	174	8
Black Rock to Cooperage, Mo.	74	30	274	35	200	5
Bay to Beasley, Mo.	40	25	295	35	255	10
Deckerville, Mo.	28	23	285	35	257	12
Gilmore, Mo.	25	23	286	38	261	15
Turrell to Clarkdale, Mo.	20	19	285	38	265	19
Jericho to James Mill, Mo.	16	15	289	38	273	23
Harvard to Bridge Junction, Mo.	7	13	299	38	292	25

The Iron Mountain and Frisco proposed also a revision of their rates from certain stations on uncompressed cotton "with carrier's privilege of compressing." These proposed changes do not generally correspond with those in rates not carrying the privilege, the purpose being, as explained, to preserve a differential of 8 cents, Memphis under St. Louis, in order to equalize through rates to eastern points via those cities.

The St. Louis shippers have taken no part in the proceedings. Representatives of the Memphis shippers testified at the hearing, but confined their criticism to the proposed rates from a limited territory in northeastern Arkansas and southeastern Missouri shown on the accompanying map. It will be observed that the carriers propose equal rates to St. Louis and Memphis from all points in southeastern Missouri except the extreme southeastern portion, referred to in the record as the "boot heel" of Missouri. This territory, with the exception noted, extends southward to and including Slagle, Gibson, Tallipoosa, and Portageville, Mo., on the various lines of the Frisco, Ferguson, Mo., on the Iron Mountain, and Campbell, Mo., on the Cotton Belt. In the territory immediately south, extending to and including Hoxie, Jonesboro, and Nettleton, Ark., and Arbyrd, Mo., the proposed differential in favor of Memphis is 5 cents except on the Iron Mountain, where, for some unexplained reason, it is 4 cents. Complainants contend that the differential of 5 cents should be carried farther north, as

follows: From Slagle, Mo., to and including Park, Mo.; from Gibson, to and including Pamet, Mo.; and from Portageville, to and including Matthews, Mo. The average distances of these blocks of stations to St. Louis and Memphis, respectively, are approximately as follows:

	St. Louis.	Memphis.
	Miles.	Miles.
Slagle to Park.....	215	131
Gibson to Pamet.....	193	124
Portageville to Matthews.....	187	118



Complainants ask further that the northern boundary of the 10-cent differential zone be carried correspondingly northward. The following are representative points in the territory now having a 5-cent differential and in which a 10-cent differential is asked. Distances to St. Louis and Memphis from junction points are shown over all lines interested:

	Routes.	St. Louis.	Memphis.
		<i>Miles.</i>	<i>Miles.</i>
Knobel, Ark.....	Iron Mountain.....	199	128
Paragould, Ark.....	{.....do.....	219	107
	{Cotton Belt.....	237	129
Walnut Ridge, Ark.....	Iron Mountain.....	225	154
	{Frisco.....	258	88
Jonesboro, Ark.....	{.....do.....	282	64
	{Cotton Belt.....	264	107
Nettleton, Ark.....	Iron Mountain.....	238	88
	{Frisco.....	296	60
Kennett, Mo.....	.....do.....	223	110
Pascola, Mo.....	.....do.....	212	97

Defendants contend that the differences in distance do not justify the differentials requested, and further point to the fact that they propose the same rates to St. Louis and Memphis from points on the Frisco southwest of Springfield, Mo., notwithstanding a difference in distance of 44 miles in favor of St. Louis. The evidence indicates little production of cotton in that territory and we can not assume that the advantage of Memphis therein would be a fair offset to its disadvantages elsewhere. Further, the distances from that territory are substantially greater, justifying differentials relatively smaller. It is further claimed on behalf of the Frisco that the rates to St. Louis from its stations Slagle to Park and Gibson to Pamet are largely controlled by the shorter routes of the Iron Mountain or the Cotton Belt from the same sections. Giving due consideration to this contention we nevertheless conclude that some readjustment of these zones is proper. Defendants will be required to provide and maintain a differential of not less than 5 cents per 100 pounds in favor of Memphis in the following described territory:

On the Iron Mountain south of and including Neelyville, Mo., and on the branch from Neelyville to Doniphan, Mo.; on the Frisco south of and including Naylor, Campbell, Canalou, and Matthews, Mo.; on the Cotton Belt south of and including the line from New Madrid, Mo., to, but not including, Paragould, Ark.

Defendants will further be required to provide and maintain a differential of not less than 10 cents per 100 pounds in favor of Memphis in territory described as follows:

On the Iron Mountain south of and including Walnut Ridge and Paragould, Ark.; on the Frisco south of and including Walnut Ridge, Ark., and Kennett and Pascola, Mo., including the line from Kennett to Pascola; on the Cotton Belt south of and including Paragould, Ark.

Differentials of 5 cents or more are in effect from points south of those we have named, and this report does not contemplate their disturbance.

Other differentials proposed by defendants are approved, but without prejudice to complaint and investigation as to differentials in rates from specific points.

It must be understood that the determination or approval herein of differentials is not a finding as to the reasonableness of any rate. Since the hearing in this supplemental proceeding the Commission has reopened the original case, of which the cotton feature was a part, and has indefinitely postponed the effective date of the orders previously entered requiring the establishment of a scale of maximum class rates for application between Memphis and points in Arkansas and the submission of proposed commodity rates in the same territory. At the same time a general investigation was instituted, with which this case has been consolidated, into the entire adjustment of rates, practices, and regulations applicable between Memphis and all points in Arkansas, as well as in contiguous territory in Missouri and Oklahoma. By its terms, however, this order expressly excluded, among others, the adjustment of rates on cotton and practices of concentration, compression, and reconsignment relating thereto; and the proposed general investigation, so far as it now appears, will not affect the differential relationship here contemplated. Some changes in the volume of the rates themselves may conceivably result, but the findings herein are not to be construed as going toward the measure of the rates resulting from the application of the differentials herein determined and approved. These differentials should therefore be applied to the adjustment of rates on cotton as now existing. It is suggested that a grading of rates as between the different zones would be preferable to an abrupt increase of 5 cents in the differentials when passing from one zone to another.

Complainants contend on brief that St. Louis derives an advantage over Memphis in the alleged fact that from points on the Cotton Belt cotton may be shipped through St. Louis to Boston on a through rate, in the division of which the Cotton Belt accepts a net amount no greater than it receives for the much shorter haul to Memphis, such through rate not being applicable via Memphis. Thus, it is claimed, the differential advantage to which Memphis is entitled is practically denied. Under the application for rehearing and our order issued pursuant thereto, this matter is not properly in issue.

Complainants also claim that the Iron Mountain and the Cotton Belt have not complied with our order requiring the removal of unjust discrimination against Memphis and in favor of St. Louis in "concentration, compression, and reconsignment practices." Although this matter is not in issue in this supplemental proceeding, it is provided for by specific order of the Commission, and the carriers, if they have not already done so, will be expected to remedy this situation immediately, failing which complainants may bring the matter to our attention for whatever action is necessary to secure compliance with our order in this respect.

An order will be entered in accordance with these findings.

THE CAR PEDDLING CASE.

No. 9092.

NEBRASKA STATE GRANGE ET AL.

v.

UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted February 14, 1917. Decided June 21, 1917.

1. The view that the use by a shipper of a car on the carrier's tracks at destination as a place for peddling or vending to the public the carload shipment arriving in it is a service of transportation has no sanction at common law or in the act to regulate commerce; and the mere toleration by certain carriers through a period of years of such a use of their property affords no basis for a ruling that the practice has grown into a shipper's right and a carrier's duty.
2. Tariff items providing free time for unloading, and demurrage charges for a further detention of a car for that purpose, do not embrace the use of the carrier's equipment and station grounds as a place where the carload shipper may transact business with the public for his own profit.
3. The business of a carrier is transportation, and its property may not be subjected against its will to a use not connected with transportation.
4. Discrimination in according or withholding a car-peddling privilege condemned and a distinction made between car peddling and consolidated shipments to agents of granges and other farmer organizations.

C. A. Sorensen, H. R. Sullivan, George S. Christy, and J. A. Dietz for complainants.

Louis A. Kinney for Nebraska-Iowa Fruit Jobbers Association; *A. J. Branscom* for Traffic Bureau, Aberdeen Commercial Club and Chamber of Commerce of Watertown, S. Dak.; *H. W. Bishop* for North Dakota Fruit Jobbers; *William H. Young* for Wiley & Morehouse; *A. C. Slaughter* for Lagomarcino-Groupe Company; *R. D. Springer* for Traffic Bureau of the Sioux Falls Commercial Club; *George C. Groupe* for Western Fruit Jobbers Association; and *J. H. Henderson* and *Dwight N. Lewis* for Iowa Shippers of Fruit and Produce, interveners.

C. J. Lane and *D. E. Stenger* for Union Pacific Railroad Company; *George R. Merritt* for Northern Pacific Railway Company; *W. F. Kirk* and *H. T. Guinn* for Missouri Pacific Railway Company and its receiver; and *H. A. Scandrett, John F. Finerty, Charles Daugherty, O. W. Dynes, Robert H. Widdicombe, F. G. Wright, R. B. Scott, and Kenneth F. Burgess* for all defendants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

During the fall of 1915 certain carriers operating in the middle west took steps to put an end to the peddling or retailing of fruits, vegetables, and other commodities from cars in railroad yards. By some lines the continuance of the practice was forbidden through operating rules directed to their local station agents, while in the case of other carriers the prohibition was promulgated in their tariffs. The custom was not one of recent origin. In that section of the country, and particularly in the states of Kansas and Nebraska, this use has been made of freight cars and railroad yards for more than 25 years. Although not sanctioned by specific tariff authority, the practice had been permitted and indeed was encouraged by some of the carriers. In late years the custom has grown until it has become now quite common in that territory for shippers to use box cars as a vending place for the merchandise and commodities arriving in them.

The practice has been indulged in by three different classes of persons:

1. Granges and similar associations of farmers purchase in carload quantities articles used by their members, such as salt, binder twine, lumber, coal, and feedstuffs. Members of the association, who have actually placed an order or who may be interested in making purchases, are notified when the car is expected to arrive or immediately after its arrival. They then go to the car with their wagons and take away such portion of the shipment as they have arranged for or have purchased. When the entire contents of the car can not be disposed of in that manner whatever remains is offered for sale to the general public, the negotiations and sales taking place within the car while in the carrier's yards or on its sidetracks. Two of the complainants, the Nebraska State Grange and the Farmers' Union, have more than 30,000 members in the state of Nebraska, with 2,000 subordinate granges or unions scattered throughout the state. These organizations buy and distribute a much wider range of articles than are handled by the two classes of persons next mentioned and differ from them also in that their business is conducted without profit, the object being to supply the merchandise desired by their members at the lowest possible cost.

2. Local merchants at small cities and towns frequently have shipped to them in carload quantities apples, potatoes, grain, coal, salt, flour, feed, etc., and upon its arrival at destination make sales and deliveries directly from the car. Jobbers and wholesalers of fruits and vegetables also make sales and deliveries to retailers directly from the car.

3. Another class consists largely of itinerant merchants who purchase from growers carload quantities of fruits, vegetables, etc., and then ship the car to themselves or to their agents at some country station. It may happen also that a grower, wishing to dispose of his surplus stock, ships a carload to some point and accompanies it to look after the sale. Upon the arrival of the car at destination, or prior thereto, and whether it has been shipped by a merchant or by a farmer, notice is given to the residents of the community by mail, by telephone, through the medium of the local press, or by means of posters or circulars. The prospective buyers then go to the station or sidetrack upon which the car has been placed for unloading, and, after making their purchases from the car, either carry or haul them away.

The tariff provisions complained of and which were filed in order to require shippers to discontinue the practice just described need not be quoted here at length. It will suffice to say that if they are enforced the vending or retailing of shipments from cars will be stopped in the territory in question, in so far as interstate traffic is concerned. But whether this result is accomplished by tariff rules or by instructions to station agents, it is alleged by the complainants to be unreasonable in violation of section 1 of the act and unduly prejudicial in violation of section 3. The issue, as stated by one of the complainants, is that a shipper, after loading a freight car and shipping it to a desired destination, has a right to retail the contents to the public out of the car while in the railroad yards or on a carrier's sidetrack. When asked whether this was a common-carrier service, so far as the railroad is concerned, counsel for the complainants said that they were not asking for a particular service at the hands of the carriers but for the right "to use their equipment when we pay for it." Under the carload rate there is ordinarily an allowance at destination of 48 hours of free time, and the car may be detained by the shipper still longer upon the payment of the usual demurrage charges; and apparently the contention, that in using a car as a salesroom the complainants are within their legal rights, is based on the theory that, as the carrier is paid under the rate for the first 48 hours and by demurrage for the further detention of the car, the shipper may use it as a place for conducting business transactions with the public for his own profit, even though that also involves the use by the shipper of the carrier's track on which the car stands and of its station yards. "The right," it is said, "to retail commodities from cars is necessary to the public convenience generally, and to the shippers and growers of fruit and vegetables." The detention of cars for this purpose in this territory is shown by the record to vary from five to seven days. But the farmer organiza-

tions apparently are able ordinarily to unload their cars within the free time; and they assert that, in their own interest, they are as much concerned as the carriers themselves in the prompt unloading and release of freight cars.

The carriers, on the other hand, moved to dismiss the proceeding on the ground that the Commission is without authority, under the act to regulate commerce as amended, to require them to permit the continuance of the use of their cars, tracks, and yards as places for the conduct of business by shippers with the public. They urge not only that the Congress had not given the Commission the power to impose such a practice upon the carriers, but that it could not constitutionally subject them to such a burden either by a direct statute or through a delegation of such a power to the Commission; for this, it is urged, would be a taking of property without due process of law.

The record is voluminous and contains much testimony that is not pertinent to the issues. On behalf of the complainants, evidence was offered tending to show that if the practice is prohibited quantities of fruits and other products will go to waste in seasons of large yields because the entire crop often can not be disposed of through the ordinary channels; that the peddling or retailing of fruits and vegetables from cars insures sales that can not otherwise be made; that the consuming public is able in this way to secure foodstuffs at comparatively low cost; and that the result of forbidding the practice would be to stifle competition between retailers and the small shipper who peddles from the car, thereby increasing the price of certain food products and other commodities to the consumer. On the other hand representatives of retailers and jobbers intervened at the hearing in opposition to the prayer of the complainants, alleging that vending from cars is an unjust interference with their business and that it encourages the sale and use of inferior products. The defense of the carriers may be summed up as follows: The vending of perishable commodities from the cars delays the equipment, constitutes "attractive nuisances" for children, draws to the premises of the carriers persons who come on no business connected with transportation, congests terminals and increases the hazard of railroad operation, monopolizes sidetracks to the exclusion of the consignors and consignees of freight, and seriously interferes with the business of the carrier in furnishing transportation. Years ago, it is said, inducements of many kinds were held out by the carriers to prospective settlers in this western country; small towns were without warehouses and other storage facilities and, because of the difficulty in getting fruits and vegetables to such points, sales and delivery of shipments were allowed directly from the cars. From

this beginning has evolved the present practice, by merchants, farmers' organizations, and individuals, of using box cars as sales-rooms; and the carriers wish to put an end to it because of the attendant embarrassments to their service and to the performance of their duties for the public. If the practice be upheld as a common right of the carload shipper, the carriers assert that it will be taken advantage of extensively and to the prejudice of the general body of shippers.

The Burlington, one of the defendants, endeavored in 1915 to stop the custom by publishing a tariff rule prohibiting the practice, but the Public Utilities Commission of Illinois required the cancellation of the rule, in so far as it was applicable to state traffic, on the general ground, as we are advised, that a tariff is not a proper place for such a rule. The Railroad Commission of Nebraska a little later issued a similar order. The Burlington continues to publish the rule in its tariffs, but with the provision that it will not apply on local state traffic in Illinois, Nebraska, and Montana. In connection with the exception as to Illinois traffic, the tariff provides that "current operating instructions will govern on Illinois state traffic"; a representative of the Burlington testified, however, that peddling from cars is not practiced in that state. The tariff rule as published by the Union Pacific is the same as when first established, except for the provision that "it will not apply on Nebraska state traffic." At the present time, therefore, peddling from cars is generally permitted on state traffic in Nebraska, and this the defendant says is partly due to the cancellation of the prohibitory rule as ordered by the Nebraska commission. Despite the prohibition, however, the practice is still continued in that state on interstate carload shipments received by local granges, farmers' unions, and local merchants. No reason is given of record for not publishing a similar rule to apply on traffic in the state of Montana.

From what has been said it will be noted that the continuance of car peddling, in the restricted territory in which it is now permitted, is demanded by the complainants and by certain interveners apparently as a right that inheres in the carload shipper. The legal basis for the demand is not clearly defined of record. Reference was made, however, to the fact already alluded to, that 48 hours of free time is customarily allowed under the carload rate, and that a car may be held by the shipper for a still longer period by paying the usual demurrage charges. Presumably the inference intended to be drawn from this was that as the car, when so detained, is held at the shipper's expense the carrier is fully compensated for its use by the shipper for any purpose, including its use as a vending place for its contents. This contention, however, is obviously one that requires

careful examination before it may be accepted as an established general principle of transportation. If such a right exists with respect to interstate carload shipments into the state of Nebraska, it can not well be denied elsewhere; and a general resort to the practice might seriously impair the interest of the general shipping public. At this moment the Commission in different ways is being made aware of the fact that at many important points throughout the country there is still a serious shortage of freight cars. This in greater or less degree has been characteristic of our transportation service for many months. It is obvious therefore that, while shippers at large are crying out for cars in which to move their merchandise to fill their contracts and to meet the country's requirements, those who have had their transportation service completed ought not to be permitted to detain the cars as places of business for their own profit unless, indeed, this is a demand a shipper may make of a carrier as of right.

Is such a use of a carrier's car, tracks, and yards a service of transportation that a shipper may demand of a carrier? In considering this question we naturally turn first to the tariffs in order to ascertain to what extent they may throw any light upon the inquiry:

A general tariff of "demurrage and storage rates, rules, and regulations," published by the Burlington, and which may be taken as more or less typical of similar tariffs in effect in this general territory, provides that 48 hours of "free time will be allowed for loading or unloading of all commodities." Another clause provides a method for computing the time "on cars held for unloading." Provision is also made for demurrage "after the expiration of free time allowed." In the same tariff periods are provided for disposition, for reconsignment, and for reshipment. But unloading, reconsigning, reshipping, and similar services are strictly transportation functions; and the detention of a car for any such purpose bears not even a remote relation to the detention of a car by a shipper as a salesroom for its contents. The latter use of a carrier's equipment and property, while undoubtedly a commercial convenience to the shipper, lies entirely outside the service and duty a railroad owes the shipper as a common carrier and is in no sense a common-carrier service. It is true that at primary grain markets the carriers in this territory permit the detention, for the purpose of inspection and grading, of cars containing grain; but this results, as we understand it, from the fact that the grading and inspection of grain is required under local legislation and is usually done by public officials. At some of the markets the volume of grain receipts is such as to require special grain inspection tracks that are used for no other purpose. But the inspection and grading of grain involves no invitation to the general

public to invade the premises of the carrier to make their purchases from the car; after the grain has been inspected and graded by the officials, the samples taken are customarily sent to the local grain exchange, where they may be viewed by prospective buyers. So far, then, as the tariffs of the carriers operating in this general territory are concerned we do not find, nor has our attention been called to, any provision authorizing at destination the use of the car, tracks, and yards of the carrier as a shipper's place of business to which the public may resort to make their purchases; and if such a use of a carrier's property may from any point of view be regarded as a service of transportation, it is being performed unlawfully. For it is well settled that a carrier may not legally offer a transportation service to a shipper or perform the service for him except under definite tariff authority.

We can not, however, give our sanction to the view that the use of a car by a shipper as a place for vending its contents to the public is a service of transportation or a right that the carload shipper may demand of the carrier either at common law or under the act to regulate commerce. Nor are we able to accept the view that the 48 hours of free time, provided under the carriers' tariffs to enable the shipper to unload the car, embraces a right in the shipper to open a public shop in the car during that time, or that its further detention, under demurrage, for unloading or for any similar transportation service, subjects the car and the carrier's track and station grounds to use by the shipper as a place of business with the public. The suggestion that the acquiescence in the practice throughout a substantial period of years, by the carriers in this limited section of the country, gives it the status of a transportation practice and confers upon the Commission the power, under section 15 of the act, to require its continuance on the theory that the withdrawal now of the privilege would be unreasonable, has no basis in reason or in authority. Transportation is a public service and its general scope has long been well defined and understood. It has never been considered to include any such use of a carrier's equipment and station property as is here asserted; and the mere toleration by the carriers through a period of years of such a use of their property affords no basis for a ruling that the practice has now grown into a shipper's right and a carrier's duty and is a transportation service.

In certain of its aspects and in a purely illustrative sense a railroad company may be regarded as a manufacturing plant, the output of which is transportation for the public. In the facilities used by it in the manufacturing process the public has a certain interest. But it is now well settled that the property of a railroad company in a large sense is its private property and is subject to the same

control by it that an individual has over his private property. Its equipment, tracks, railroad stations, and yards that have been dedicated to its public duty as a common carrier must be put at the service of the public for transportation purposes upon reasonable demand; but beyond this and within its charter limits a railroad company, like other owners of private property, is in full control of its own affairs. This principle is strongly announced in *Great Northern Ry. v. Minnesota*, 238 U. S., 340, 346, where it is also pointed out (p. 345) that—

The business of a railroad is transportation, and to supply the public with conveniences not connected therewith is no part of its ordinary duty.

That a railroad also holds its general railroad property in private right, except as to those who call upon it to perform a service of transportation, has long been an established doctrine, and many cases might be cited in which efforts have been made unsuccessfully to subject the property of a railroad company to a use not connected with transportation. *Donovan v. Pennsylvania Co.*, 199 U. S., 279, is typical of many such cases to be found in the court reports. There it appeared that the defendant had granted to a transfer company the exclusive right to maintain an office in its passenger station at Chicago and to keep its agents in and around the station to offer the use of its cabs to the traveling public. One of the questions involved was whether the railroad company could legally exclude from its depot grounds and passenger station other hackmen who desired to solicit the custom and patronage of its passengers. After pointing out that its station house and depot grounds, like its track and other property and appliances employed in transportation, were subject to the public use to the extent necessary for the public business intended to be accomplished by the construction and maintenance of the railroad as a highway, but that it is not bound to so use its property that those having no business with the railroad may make profit out of it for themselves, the court said (p. 294):

Its property is to be deemed in every legal sense private property as between it and those of the general public who have no occasion to use it for purposes of transportation.

The distinction between the right that the public has in the property of a railroad company, in connection with a transportation service to be performed, and the control a railroad company has over its property, as private property, with respect to those who are not demanding a service of transportation, has not only frequently been pointed out by the courts but has been carefully sustained.

That distinction has also been made by this Commission in *Southwestern Produce Distributors v. Wabash R. R. Co.*, 20 I. C. C., 458, where we said (p. 461):

While a common carrier must serve the traveling and the shipping public * * * we have not understood that, in undertaking to perform certain duties for those who travel or ship their merchandise over its lines, it assumes any obligations to those who do neither the one nor the other. Certainly if any such obligations exist they are not to be found in the act to regulate commerce and are therefore beyond our power to enforce or regulate. Our authority under the act, in a broad and general sense, extends only to the relations between carriers and those who travel or who ship their merchandise over their lines. In performing these services for the public the property of the carrier is subjected to a public use that we may regulate and control in the public interest and for the correction of abuses in the way of discriminations and preferences. But to a certain extent the public stations, depots, and grounds of carriers are also their private property, subject to their own control with respect to any private business carried on in or upon them. * * *

The general principle announced in the cases cited, and sustained in many other cases in courts of equal authority, must find full recognition upon the record before us. The period of 48 hours of free time allowed for unloading and the further detention of the car under demurrage for the same purpose are affirmatively provided for in the tariffs of the defendant carriers. This is a part of the transportation service that they have undertaken to perform, or it at least directly affects that service. From what has been said, however, it will be observed that we are not able to accept the theory that the 48 hours of free time for unloading, or the further detention of the car under demurrage for that purpose, embraces a right in the shipper to utilize the time by using the carrier's yard and station property as a place of business to which he may invite the general public to come and make purchases directly from the car. This is not a service of transportation, nor does such a practice affect the service of transportation offered by a carrier to the public. On the contrary, it stands wholly apart from any duty the carrier owes to a shipper; and in forbidding the practice for the future the carrier is simply asserting that control over its property, as private property, which the courts have held it enjoys, as fully as the private individual, with respect to "those of the general public who have no occasion to use it for purposes of transportation."

Without further extending the discussion of the question presented in this proceeding, it will appear from what has been said that we find no basis of record for an order requiring the defendant carriers to permit the continuance of the practice hereinbefore described. We concur also in the view expressed by one or two of the state commissions, namely, that the carriers' tariffs are not a proper place for rules prohibiting the practice for the future. On the other hand the privilege, if accorded to shippers, seems to be lawful only when affirmatively provided for in the carriers' tariffs. But the continuance or discontinuance of the practice is a matter resting within the control of the carriers themselves and is not within the

control of the Commission except to the extent that the privilege may be accorded to some shippers and denied to others under conditions that involve an unlawful discrimination. Manifestly if the right to peddle from the car is denied to a shipper of vegetables from Iowa to a given destination in Nebraska, the same right may not lawfully be accorded to a competitor shipping like commodities to the same point from a Nebraska point of origin. That would be an unlawful discrimination and where such conditions exist they should be corrected.

What has been said in the foregoing pages is confined largely to the practice by local merchants, producers, and others of using freight cars as salesrooms. In contending for its continuance much is said of record respecting the economic advantages of the practice to small rural towns with stores and other commercial organizations that are inadequate to supply the community's needs. It is also urged, as we have said, that it enables small producers, for reasonable prices to the consumers, to dispose of surplus stocks of fruits and vegetables that otherwise might remain on their hands. These considerations have not been overlooked in our examination of the record. But benefits of that nature are more or less incidental and local and can have but little weight when compared with the far more important economic necessity of keeping the car equipment of our carriers as active and free as possible for moving the country's commerce, a problem which in the recent past, as before intimated, has taxed the ingenuity of our railroad managers and regulating bodies, and may in the near future become a still more troublesome feature of our national transportation service. In the belief that higher charges would tend to force cars being detained by shippers at destination, for their purely selfish or individual reasons, into the service of shippers waiting for cars in which to move their traffic, the Commission in a number of instances during the past few months has sanctioned increased demurrage charges; and in the interest of the general shipping public and in order to keep the cars of the carriers employed as much as possible in the actual carriage of commerce, the Commission, over the protests of shippers whose individual or private interests were promoted by the longer free time for unloading at destination, has permitted many tariff rules to become effective by which the free time has been reduced. It has been suggested also that instead of applying the ordinary demurrage rules special charges might be established for the detention of cars by shippers while vending their contents to local communities. But the defendant carriers have proposed no such arrangement and, in the light of what has been said, we are not prepared to hold that we may lawfully require them to subject their property to such a use, particularly

while shippers in many parts of the country are urgently demanding cars in which to move their merchandise.

There remains to be considered the practice of granges, and other farmer organizations, of making combination carload shipments consigned to an agent of the grange but consisting of merchandise arranged for or actually purchased by members of the grange. This is obviously an entirely different matter. The members of the grange alone have an interest in the contents of the car, the grange agent acting for them and without any profit or advantage to himself. Having the sole interest in the shipment the grange members are also interested in the transportation and pay the freight charges, as we may assume. They unload the car, each taking away the portion of the shipment which he has arranged for or purchased. From the carriers' standpoint the handling in this manner of a carload shipment at destination does not differ materially from a carload shipment of fertilizer, for example, consigned to an individual farmer and unloaded by him with the assistance of his neighbors. But without undertaking now to make any definite ruling with respect to this practice, it will suffice to say that we do not understand that the carriers have indicated any particular objection to it, and on the record before us we see no substantial grounds for condemning it either as unlawful or as involving unjust discriminations. To the extent, however, that granges and other farmer organizations also use the freight cars of the carriers, and their tracks and station grounds, for the purpose of conducting sales of the contents of the car or of any portion of the shipment that remains unclaimed by grange members, what has been said in the foregoing report must have full application.

In the light of the foregoing findings and conclusions the complaint must be dismissed and such an order will be entered; it will be understood, however, that further representations by such shippers as may be affected may be made to the Commission in case the unlawful discriminations referred to in the report are not promptly corrected.

SOUTHERN PACIFIC COMPANY'S OWNERSHIP OF ATLANTIC STEAMSHIP LINES.

No. 6606.

APPLICATION OF SOUTHERN PACIFIC COMPANY, UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT, IN CONNECTION WITH ITS OWNERSHIP OF THE ATLANTIC STEAMSHIP LINES.

Decided May 12, 1917.

The petitioner having corrected the objectionable practices enumerated in our original report, we find that the existing service of the Southern Pacific Company-Atlantic steamship lines between the points designated is in the interest of the public and of advantage to the convenience and commerce of the people.

Same appearances as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, Commissioner:

In our original report in this case, 43 I. C. C., 168, we found that an extension of the time during which the petitioner may continue to operate or have an interest in the Southern Pacific Company-Atlantic steamship lines will neither exclude, prevent, nor reduce competition on the routes by water, and that the correction of certain objectionable practices which were enumerated would leave no basis of record to justify the withholding of the requested finding under the act that the existing service of those steamship lines between New York and New Orleans and between New York and Galveston is in the interest of the public and of advantage to the convenience and commerce of the people.

The petitioner by the filing of appropriate tariffs now effective from New York and points in Atlantic seaboard territory to Galveston and interior Texas points has corrected the objectionable practices above referred to. We therefore find that the existing service of the steamship lines named between the points designated is in the interest of the public and of advantage to the convenience and commerce of the people.

All rates, fares, schedules, and regulations applying to the transportation of persons and property by the petitioner's Atlantic steam-

ship lines between New York and New Orleans and between New York and Galveston, subject to the act, must be filed with the Commission and posted as required by the act to regulate commerce and regulations of the Commission on or before July 1, 1917.

The requirement of section 6 that 30 days' public notice of change in rates be given may work a disadvantage to the steamship company in instances where it is forced to meet the port to port competition of water carriers not subject to the act and not required to file tariffs. With respect to such traffic petition may be filed with the Commission for continuing permission to publish, file, and make effective lower rates on less than statutory notice. Such permission will not, however, authorize the establishment on short notice of rates higher than those in effect when permission is granted.

An appropriate order will be entered.

45 I. C. C.

MARINETTE-GREEN BAY MANUFACTURING COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted April 17, 1916. Decided July 3, 1917.

1. Except to the extent that the class-rate relationship as between excelsior and excelsior pads has not been observed in the commodity rate adjustment, the rates on both these products from Green Bay and Marinette to Chicago, to the central freight association territory, to the southern classification territory, and from Green Bay to the trunk line territory, have not been shown to be unreasonable.
2. From Marinette to the trunk line territory rates on excelsior and excelsior pads should not exceed those contemporaneously maintained from Green Bay.

Luther M. Walter and John S. Burchmore for complainant.

D. P. Connell, R. N. Collyer, William Burger, W. R. Powe, O. W. Dynes, J. N. Davis, C. C. Wright, and Robert H. Widdicombe for defendants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In respect of shipments to the official and southern classification territories from Green Bay and Marinette, both in the state of Wisconsin, the complaint assails as unreasonable the carload class rates on excelsior and excelsior pads, and further alleges that these rates, to the extent that they exceed the carload commodity rates contemporaneously maintained on lumber, subject excelsior and excelsior pads to undue prejudice. The commodity rates from Marinette to Chicago, on both excelsior and pads, are also attacked as unreasonable. We are asked to prescribe commodity rates, on both these products of the complainant's plants, to points in the official and southern classification territories that will not exceed either the carload commodity rates contemporaneously maintained on lumber, or 75 per cent of the class rates at present maintained from Green Bay on excelsior. We are also asked to prescribe from Marinette to Chicago the commodity rate of 10 cents at present maintained on excelsior in carloads from Green Bay to Chicago.

Green Bay and Marinette are points on the western shore of an arm of Lake Michigan known as Green Bay and are about 200 and 249 miles, respectively, north of Chicago. Both cities have all-rail communication with Chicago over the lines of the Chicago, Milwaukee

& St. Paul and the Chicago & North Western railways. There is also an all-water route to Chicago by way of Lake Michigan; but because of marine regulations this route is not available for the transportation of excelsior and excelsior pads. To the trunk line territory and to a large part of the central freight association territory traffic usually moves by car ferry across Lake Michigan and thence by rail; while to the southern classification territory it moves principally all rail through Chicago.

The complainant has two plants, one at Green Bay where excelsior is manufactured and the other at Marinette where both excelsior and pads are made. The mill price of excelsior is about \$9 or \$10 a ton. The pads, which are generally used as packing to protect furniture and similar articles, are folds of excelsior inclosed in paper; and while the complainant testified that their selling price at the mills is from \$12 to \$14 a ton, it is nevertheless clear from the evidence adduced of record that the market value of the pads is approximately 100 per cent greater than the market value of excelsior.

The principal markets reached by the complainant are Chicago, points in the central freight association territory, and, to a lesser extent, points in the trunk line territory. At these markets competition is said to be encountered chiefly with excelsior manufactured at Milo, in the state of Maine, at Alpena, in the state of Michigan, at Fredericksburg, in the state of Virginia, and at Mobile, in the state of Alabama. The complainant, with few exceptions, does not reach the markets in southern classification territory, but it feels that it could do so if the rate adjustment here sought is prescribed.

Both excelsior and excelsior pads are shipped in machine compressed bales. The pads, compressed to a less density, weigh less per bale and therefore load lighter, this being reflected in the average loading during the year ending October 31, 1915, which was 30,072 pounds on 293 cars from Green Bay, where excelsior only is made by the complainant, while the average loading was but 24,357 pounds on 527 cars from Marinette, which presumably contained both excelsior and pads. The carload minimum in the three principal classification territories on both products is 20,000 pounds. The classification ratings are: In the western classification territory, class C on excelsior and fifth class on excelsior pads; in the southern classification territory, class D on excelsior and sixth class on pads; and in the official classification territory, fifth class on both commodities in either straight or mixed carloads.

The present class C and fifth-class rates to Chicago are, respectively, from Green Bay 12.5 cents and 15 cents per 100 pounds, and

from Marinette 15 cents and 17 cents. The class-rate differentials Marinette over Green Bay are 2.5 cents on class C, and 2 cents on fifth class. Commodity rates, however, ranging from 17 to 20 per cent less than the class rates, are maintained on both products from both cities to Chicago. These are, from Green Bay on excelsior, 10 cents, and on the pads 12.5 cents; and from Marinette on excelsior 12.5 cents, and on the pads 15 cents. From Green Bay the rate relationship between excelsior and pads is the same under the commodity rate application as it is under the class-rate application; but from Marinette the spread is one-half cent wider. The commodity rates from Marinette to Chicago, based on the average loading of 30,072 pounds of excelsior from Green Bay, and 24,357 pounds from Marinette, where both excelsior and pads are manufactured, yield revenue per car-mile of 15.1 cents on excelsior and 13.1 cents on pads and excelsior mixed. In other words, the charges per car and the revenue per car-mile on the pads under the higher rate are less than the charges per car and the revenue per car-mile on excelsior under the lower rate. In view of the lighter loading and the higher value of the pads, we are of the opinion that the class-rate relationship, at present maintained in the western classification territory, is not unreasonable, and therefore conclude that for the future, as between excelsior and excelsior pads, the class-rate relationship should be observed in the commodity rate adjustment.

We come now to the consideration of the intrinsic reasonableness of the rates from Marinette to Chicago, and also to the contention that they should not exceed the rates contemporaneously maintained from Green Bay to Chicago. The complainant shows (a) that lumber, paper, and furniture take the same rates to Chicago from both Green Bay and Marinette; (b) that competition at Chicago is encountered with an excelsior wrapper manufactured at Sheboygan, which moves to Chicago on the excelsior commodity rate of 10 cents; (c) that from St. Paul to Chicago the excelsior rate is 13.5 cents for a distance of 408 miles, yielding a ton-mile revenue of 6.6 mills, while for the shorter distance of about 249 miles from Marinette the 10-cent rate here sought would yield 8 mills per ton-mile. Upon an examination of the tariffs we find that the excelsior pad rate from Sheboygan to Chicago is 12.5 cents, instead of 10 cents as stated by the complainant.

The defendants show (1) that on general traffic to Chicago, including that moving under both class and commodity rates, Marinette in its relation to Green Bay is upon a higher rate basis, the former being in the Menominee territory and the latter in the Oshkosh territory; (2) that the exception to this rule on lumber, paper, and some kinds of furniture is compelled by water competition over

the lake route, which, however, as before explained, is not open for the transportation of either excelsior or excelsior pads; (3) that the St. Paul-Chicago rates are kept at a comparatively low level both by competitive influences and unusually favorable transportation conditions; (4) that throughout the western trunk line territory the commodity rates on excelsior pads are uniformly $2\frac{1}{2}$ cents higher than the rates contemporaneously maintained on excelsior; and (5) that the rates here under attack from Marinette to Chicago, as evidenced by the following comparative table, are not out of line or inconsistent with the general commodity rate adjustment in the western trunk line territory on excelsior and excelsior pads.

Excelsior, carloads.

To Chicago from—	Distance.	Rate.	Revenue per ton-mile.	Revenue per mile per carload of 25,000 pounds.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Marinette, Wis.	249	12. 5	10	12. 5
Green Bay, Wis.	197	10	10. 1	12. 7
Menasha, Wis.	177	10	11. 3	14. 1
Oshkosh, Wis.	165	10	12. 1	15. 1
Grand Rapids, Wis.	244	12. 5	10. 2	12. 8
Wausau, Wis.	265	12. 5	9. 4	11. 8
Tomahawk, Wis.	354	13. 5	7. 6	9. 5
St. Paul, Minn.	398	13. 5	6. 7	8. 4
Richland Center, Wis.	198	10	10. 1	12. 6
Soldiers Grove, Wis.	253	12	9. 4	11. 8
Guttenberg, Iowa.	220	12	10. 9	13. 6
Steuben, Wis.	233	12	10. 3	12. 9
Union Center, Wis.	200	12	12	15
Lancaster, Wis.	212	12	11. 3	14. 1
Dubuque, Iowa.	172	10. 5	12. 2	15. 2
Sheboygan, Wis.	137	10	14. 6	18. 2
Marshfield, Wis.	269	12. 5	9. 3	11. 6
Rhineland, Wis.	315	16	10. 2	12. 7

Except in the particular hereinbefore mentioned, having reference to the commodity rate relationship as between excelsior and excelsior pads, we are of the opinion and find that the rates from Marinette to Chicago have not been shown to be unreasonable.

As to the allegation that from Marinette and Green Bay the rates to the official and southern classification territories should not exceed the commodity rates on lumber, there is no showing of record that lumber, on the one hand, and excelsior and excelsior pads, on the other hand, come into either transportation or trade competition with each other; nor does it appear that there is a similarity of transportation conditions, value, or other elements that usually enter into rate making, that require or would justify the application of the commodity rates on lumber as reasonable maximum rates for the transportation of either excelsior or excelsior pads. We therefore dismiss without further discussion the contention that the lower

commodity rates contemporaneously maintained on lumber subject excelsior and excelsior pads to undue prejudice.

There remains for consideration the reasonableness of the class-rate adjustment from Green Bay and Marinette to the official and southern classification territories, and the complainant's contention that these rates, which are applied to both excelsior and the pads, should not exceed 75 per cent of the class rate at present maintained from Green Bay on excelsior. Both producing points are on a rate parity in reaching the central freight association territory, and this is true also of southern classification territory since to that territory the through rates are made on the combination over the Ohio River crossings. To the trunk line territory, however, the fifth-class rates are uniformly 2.5 cents higher from Marinette than from Green Bay. In *Class Rates from Michigan and Wisconsin Points*, 37 I. C. C., 739, we had under consideration the class-rate differentials of Green Bay shore points over Milwaukee and Manitowoc to both the central freight association and eastern trunk line territories. In respect of both these territories the substance of our conclusion was that from Green Bay and Marinette the same class differentials over Milwaukee and Manitowoc should be maintained, thus keeping both cities on a rate parity. No explanation is made on the record here as to why class-rate differentials, Marinette over Green Bay, should be maintained on traffic for the longer distances to trunk line territory, when for shorter distances to the central freight association territory both cities take the same class rates.

The present class-rate adjustment is quite generally shown in the subjoined table.

Destinations.	Rate asked.	Green Bay rate on excelsior.	Marinette rate on excelsior.	Marinette rate on pads.
C. F. A. territory:				
La Fayette, Ind.....	15	20	20	20
South Bend, Ind.....	12.6	16.8	16.8	16.8
Grand Rapids, Mich.....	10.3	13.7	13.7	13.7
Detroit, Mich.....	11.9	15.8	15.8	15.8
Youngstown, Ohio.....	15	20	20	20
Trunk line territory:				
Johnstown, Pa.....	18.7	24.9	27.4	27.4
Harrisburg, Pa.....	22.9	30.5	33	33
Utica, N. Y.....	22.8	30.4	32.9	32.9
Jersey City, N. J.....	25.1	33.5	36	36
Baltimore, Md.....	22.9	30.5	33	33
New England territory:				
Bridgeport, Conn.....	27.4	36.5	39	39
Hartford, Conn.....	27.4	36.5	39	39
Lowell, Mass.....	27.4	36.5	39	39
Pittsfield, Mass.....	27.4	36.5	39	39
Manchester, N. H.....	27.4	36.5	39	39
Southeastern territory:				
Lexington, Ky.....	23.3	31	31	37
Nashville, Tenn.....	22.1	29.5	29.5	41
Birmingham, Ala.....	31.1	47	47	61
Atlanta, Ga.....	32.6	44.5	44.5	67
High Point, N. C.....	33.4	44.5	44.5	51

Plants for the manufacture of excelsior are located in Michigan, northern New York, northern New England, and at numerous points in the south; and from them to some of the markets in which the complainant trades, also to other markets, commodity rates are maintained which range from 65 to 95 per cent of the class rates. Comprehensive comparisons of such rates with the rates at present maintained from Green Bay and Marinette were introduced in evidence, and it is upon this showing that the complainant largely relies in contending that the class rates from its mills are unreasonable. No issue of discrimination or undue preference in favor of competing mills is urged. In fact, there is no basis for such a contention since with few exceptions the commodity rates are maintained by carriers that do not serve either Green Bay or Marinette. To show, as the complainant has done, only that such commodity rates exist and are applied from mills scattered over a large section of the country, is not conclusive against the reasonableness of higher class rates. Moreover, such a showing by itself affords no basis for a just conclusion as to the reasonableness of the commodity rates on traffic from sources so widely separated and moving over different routes or in different directions over the same routes for greatly different distances, under varying transportation and competitive conditions; therefore a comparison with such rates is not very helpful. A better test is the revenue yield per car-mile of the class rates here in issue. Using as a basis the averages of the distances and rates shown in the complainant's exhibits, and the average loading from Marinette of 24,357 pounds, the car-mile revenue is shown to be:

To—	Average distance.	From Marinette.	
		Excelsior.	Pads.
C. F. A. territory:			
Indiana.....	443	11	11
Ohio.....	514	9.5	9.5
Michigan.....	287	12.8	12.8
Trunk line territory:¹			
New York.....	727	10.2	10.2
New Jersey.....	966	9	9
Pennsylvania.....	756	8.7	8.7
Massachusetts.....	996	9.5	9.5
Maine.....	1,285	8.1	8.1
New Hampshire.....	992	9.5	9.5
Vermont.....	932	10	10
Connecticut.....	1,006	9.4	9.4
Maryland.....	926	8.8	8.8
Southern classification territory:			
West Virginia.....	689	8.8	8.8
Virginia.....	1,128	7.1	7.1
Georgia.....	968	11.2	16.8
Tennessee.....	845	11.5	14.4
North Carolina.....	1,127	10.1	10.6
Kentucky.....	581	10.9	13.2
Alabama.....	1,073	10.7	13.8

¹ From Green Bay the rates are 2.5 cents less and the car-mile revenue would therefore be correspondingly less.

Upon the evidence adduced of record we are of opinion and find that the class rates on excelsior and excelsior pads from Green Bay and Marinette to the central freight association and the southern classification territories have not been shown to be unreasonable; also that the class rates on these products from Green Bay to the trunk line territory have not been shown to be unreasonable. From Marinette to the trunk line territory, however, we are of the opinion and find that the class rates on excelsior and excelsior pads, in straight or mixed carloads, should not exceed those contemporaneously maintained from Green Bay.

An appropriate order will be entered to give effect to these conclusions.

No. 8965.

HILGARD LUMBER COMPANY

v.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY
ET AL.

Submitted December 20, 1916. Decided July 6, 1917.

St. Louis Southwestern Railway Company found to have been justified in refusing to transport beyond Thebes, Ill., three carloads of lumber forwarded from points in Arkansas and Texas, originally consigned one to Chicago, Ill., and two to Cypress, Ill., stopped in transit at Thebes, and reshipped to Cairo, Ill. Charges collected not shown to have been unreasonable and complaint dismissed.

H. J. Aldworth and *P. L. Musick* for complainant.

C. B. Cardy for Chicago & Eastern Illinois Railroad Company and its receivers.

Daniel Upthegrove, *E. B. Perkins*, *J. D. Watson*, and *E. A. Haid* for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Chicago, Ill. By complaint, filed June 16, 1916, it alleges that the charges collected on two carloads of yellow-pine lumber shipped November 17 and 19, 1915, from Thornton, Ark., and New Willard, Tex., respectively, to Cypress, Ill., and on a carload shipped July

27, 1915, from Lufkin, Tex., to Chicago, all stopped in transit at Thebes, Ill., and subsequently reshipped to Cairo, Ill., were unreasonable, and that the refusal of the St. Louis Southwestern Railway, hereinafter called the Cotton Belt, to transport these shipments from Thebes to Cairo and apply joint rates of 16 cents per 100 pounds, maintained from points of origin to Cairo by way of Thebes, was illegal. Demurrage charges which accrued during the dispute growing out of the Cotton Belt's refusal to transport the shipments beyond Thebes are also in issue. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved to Thebes as follows: From Lufkin over the St. Louis Southwestern Railway of Texas and the Cotton Belt; from Thornton over the Cotton Belt; and from New Willard over the Houston, East & West Texas Railway, Houston & Shreveport Railroad, and the Cotton Belt. At Thebes they were delivered to the Chicago & Eastern Illinois Railroad, hereinafter called the Eastern Illinois, in compliance with complainant's routing instructions. The Eastern Illinois, apparently under standing instructions, held the cars in its yards at Thebes and requested advice from complainant as to the disposition thereof. Subsequently complainant instructed both the Eastern Illinois and the Cotton Belt to reconsign all the shipments to Cairo at joint rates of 16 cents legally applicable over the routes of movement to Thebes and the Cotton Belt beyond, the latter operating over the rails of the Eastern Illinois and the Mobile & Ohio Railroad under trackage agreements. Demurrage charges accrued between the times of arrival at Thebes of the cars and the placing of these instructions, which charges are not in issue. The Eastern Illinois, which did not participate in the joint rates of 16 cents, attempted to return the shipments to the Cotton Belt, but the latter refused to receive them. The Cotton Belt had no local rate on yellow-pine lumber from Thebes to Cairo. Complainant then instructed the Eastern Illinois to forward the shipments to Cairo over its line and the Mobile & Ohio, which was done. During a controversy over the refusal of the Cotton Belt to receive at Thebes the shipment which had originated at Lufkin demurrage charges of \$29 accrued, which are in issue. Transportation charges were collected at the legally established rates of 16 cents from points of origin to Thebes and 5.1 cents beyond.

The tariffs naming the joint 16-cent rates made general reference to tariffs of individual carriers for rules respecting reconsignment.

Complainant cites the following rule carried in the Cotton Belt's tariffs in effect at the time these shipments moved, containing reconsigning rules under the heading "terminal charges":

Where reconsignment requests are made and the property involved has been switched to connecting carrier, all charges of such connecting carrier for their service must be assessed against the shipment in addition to the reconsigning charge.

It contends that under this rule the Cotton Belt should have accepted these shipments from the Eastern Illinois, and that as the former road provided no charge for reconsigning lumber, and the latter no charge for its services in connection with these shipments, the only charge legally applicable was at the joint rate of 16 cents. The Eastern Illinois concurs in this view.

The Cotton Belt contends that the rule quoted must be considered in connection with another rule in the same tariff which provided in substance that the rules contained therein would apply on carload freight while in the possession of the Cotton Belt. It insists that the rule quoted applies only to shipments switched by the Cotton Belt to connecting carriers in order to effect a delivery which the Cotton Belt has contracted to perform, in which case the connecting carrier acts as agent of the Cotton Belt; the shipment remains constructively in the possession of the Cotton Belt; and the reconsignment is effected by that road. The Cotton Belt denies that the rule has any reference to shipments such as those here considered, which have passed out of its possession and control at an intermediate point where they are delivered to a connecting carrier for a line haul beyond.

After a careful consideration of the tariffs involved we are of opinion that the Cotton Belt was justified in refusing to transport these shipments beyond Thebes at the joint rate of 16 cents, and that the charges assessed, including demurrage, were legally applicable. As the record contains no evidence in support of the allegation that such charges were unreasonable, the complaint must be dismissed.

An appropriate order will be entered.

45 I. C. C.

No. 1931.¹

RAILROAD COMMISSION OF ALABAMA

v.

CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted January 6, 1917. Decided July 5, 1917.

The rates, regulations, and practices governing the transportation, including compression in transit, of cotton from points in Alabama to interstate destinations, not found to be unjust and unreasonable or otherwise unlawful; and the discrimination complained of against Union Springs, Ala., found to have been removed by the action of the carriers in providing for the concentration and compression of cotton at that point upon the same terms as at other concentration and compression points in Alabama. Complaints dismissed.

Robert C. Brickell and Blair, Drayton & Hillyer for Railroad Commission of Alabama, complainant.

Akerman & Akerman for Commercial & Industrial Association of Union Springs, Ala., complainant.

Calvin Perkins for Farmers Gin Compress & Cotton Company.

R. Walton Moore, Albert S. Brandeis, Nelson W. Proctor, and M. P. Callaway for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complaint in No. 1931, brought by the Railroad Commission of Alabama, seeks the establishment from Alabama of rates on cotton in compressed bales lower by $8\frac{1}{2}$ cents per 100 pounds than those in effect on uncompressed cotton, with the privilege of compression by the carriers. The complaint in No. 1393, brought by the Commercial and Industrial Association of Union Springs, Ala., is the same as that considered by us in *C. & I. Asso. of Union Springs v. C. of Ga. Ry. Co.*, 12 I. C. C., 375, namely, that the refusal of the Central of Georgia Railway Company to permit compression at Union Springs of cotton shipped over its road results in undue prejudice and disadvantage.

The two complaints were heard together and at the hearing the Farmers Gin Compress & Cotton Company, of Atlanta, Ga., a corporation engaged in the manufacture and sale of gin compresses, intervened and joined with the Railroad Commission of Alabama in

¹ The proceeding also embraces complaint in No. 1393, *Commercial & Industrial Association of Union Springs v. Central of Georgia Railway Company et al.*

asking lower rates on compressed than on uncompressed cotton. After the submission of the cases this intervener asked and received permission to withdraw therefrom as a party.

Upon consideration of the testimony, briefs, and arguments, we were of opinion that we should have a more complete and comprehensive record upon which to base findings on so important a matter as the rates, regulations, and practices governing the transportation of the principal agricultural product of the south, a change in which would affect all parties interested in the growing and marketing of cotton, and therefore reopened the case for further hearing. The rehearing was assigned for January 15, 1917, at Montgomery, Ala., but was canceled upon receipt of statements from the parties that they had no additional testimony to offer. We assume from the expressed desire of the parties that the case be decided upon the record before us that there has been no substantial change in the facts, circumstances, and conditions since the original hearing.

Some time after the submission of the cases the Union Springs compress was destroyed by fire and during the summer of 1916 a new compress was erected on the same site. The Central of Georgia now provides for compression and concentration at Union Springs upon the same terms as at other compress points in the same section. The complaint in No. 1393 will therefore be dismissed.

Cotton is an agricultural product which can not be properly prepared for shipment by the grower, this being due to the fact that the machinery necessary for ginning and compression is costly. There are more than 8,000 ginning plants in Alabama and Georgia, a large per cent of them public, to which the farmers team their cotton. At these gins the seed is removed and the lint put into bales of an average density per cubic foot of $12\frac{1}{2}$ pounds and of an average weight per bale of 500 pounds. These, known as flat or uncompressed bales, are shipped in less-than-carload lots, sometimes but one or two at a time, to near-by concentration and compression points, of which there are 44 in Alabama and Georgia. At the concentration and compression points they are sampled, graded, and eventually reshipped in carload quantities. Prior to such reshipment, however, they are recompressed at the carriers' expense to a density of $22\frac{1}{2}$ pounds per cubic foot, and are then known as compressed bales. Of the 54 compresses located at the 44 points referred to, 23, located at 12 points in Georgia and 6 in Alabama, are operated by the Atlantic Compress Company, a corporation the entire stock of which is owned by 10 carriers serving the southeast. All of the rates applicable to cotton originating in Alabama, Georgia, and Florida are any quantity, and are applicable to uncompressed cotton with the privilege of compression by the carriers; and upon reshipment of cotton from the concentration and compression point the through rate from point

of origin to final destination is protected. The allowances for compression are the same to the Atlantic Compress Company and to independent compresses with which the carriers have arrangements, namely, on shipments to south Atlantic ports for export and coast-wise movement, $8\frac{1}{2}$ cents per 100 pounds from both Georgia and Alabama; on shipments to Carolina mills, 7 cents from Georgia and $7\frac{1}{2}$ cents from Alabama. Cotton moving but a short distance to the ports or to southern mills is handled through uncompressed.

Originally all cotton was handled by the rail carriers in uncompressed bales. The first compression was at the ports and was paid for by the steamship companies. Later compresses were built at interior points, both by private interests and by the Central of Georgia and other carriers, and the carriers assumed the cost of compression and made uniform the allowances to the compress companies. The Atlantic Compress Company was organized in 1901.

The first prayer of the complaint of the Alabama Commission, which will be referred to hereinafter as the complainant, is for an order requiring defendants—

To divorce the preparation of cotton in bales by fixing the rate on cotton compressed to a density of not less than $22\frac{1}{2}$ pounds to the cubic foot at $8\frac{1}{2}$ cents per 100 pounds less than the present rate on cotton from all points in Alabama to all points without the state to which the defendants have a schedule of rates on file.

The purpose of the complainant in bringing its complaint and the results other than those above indicated which it desires to bring about are stated in its brief, as follows:

This proceeding is brought on behalf of the state of Alabama for the purpose of requiring carriers operating in southeastern territory (Alabama, Georgia, and Florida) to establish on interstate shipments of compressed cotton, rates lower by the amount charged for the compression service than rates contemporaneously charged for the transportation of uncompressed cotton; also for the purpose of regulating the practices of carriers in respect to the compression of cotton, so that unjust discriminations may not be practiced as between compress owners, shippers, buyers, and places. To this end, in addition to the differential in rates it is asked that a general rule be prescribed prohibiting local uncompressed cotton from being "floated" through one compress point into another compress or concentration point by the absorption or refunding of any part of the local charge, and that all through shipments of uncompressed cotton be required to be stopped for compression at the first compress point through which they pass en route to, and in the direction of, final destination, provided the shipper desires such compression and provided no special conditions of competition exist which would make the application of such a rule result in hardship to the carrier or to the shipper (the existence of such special conditions being allowed to constitute a sufficient reason for departure from the general rule, the carrier assuming the burden of justifying such departure in favor of exceptions which it may make when the same may be challenged); that the rules and regulations applied by the carriers to the concentration of cotton, both compressed and un-

compressed, be given uniform application to all points of compression, and that a back haul in compression be restricted to intermediate stations between any compress points.

At the outset we desire to emphasize the fact that this case is not brought in the interest of any particular community or on behalf of any particular compress method or patented device, but looks to the cessation of the monopoly of the compress business long enjoyed by carriers in this southeastern territory, and thus to make it possible for growers and shippers to prepare their cotton for transportation in such manner as they may deem most conducive to their best interests; in other words, to adopt such system of compression and handling as may be best suited to their needs. The Alabama Railroad Commission instituted the proceeding because of complaints to it concerning discriminations which a state commission is powerless to remedy.

* * * * *

As has been stated, the purpose of this complaint is to take the compression of cotton out of the hands of the carriers in southeastern territory, and by removing the restrictions imposed by the practical monopoly which the railroads have created to make possible a betterment in the methods of handling cotton and in the compression thereof, which betterment may be induced if independent thought and action shall be given free play. If this is done the business will eventually be handled along the line of least resistance, and there need be no fear of the many harmful results which defendants contend will ensue if this great industry shall be withdrawn from their domination. If it shall seem best and most economical to handle cotton in accordance with the system now in vogue, this petition does not seek any such drastic change as will make impossible a substantial continuance of present methods. In other words, even with the changes in the tariffs which this petition contemplates effectuating, cotton may still be compressed at plants owned by the Atlantic Compress Company if such compression shall be most convenient and most advantageous, but where some other method would be best the granting of this petition will open the way to the adoption thereof.

In discussing the present rates, regulations, and practices and the changes therein which complainant contends for, it should be clear at the outset that all of the complainant's prayers are based on a continuance of the concentration of cotton, it being admitted both in its complaint and in its testimony that concentration "has proven a great economizer of rolling stock, and not only makes possible the movement of the crop without delay, but greatly facilitates the handling of this great staple by the interior buyers."

Under present conditions of growing and marketing cotton, concentration is a necessity to the shippers, and it can readily be seen that it enables the carriers to transport the crop with the greatest conservation of its equipment, for the less-than-carload movement into the concentration and compression point is short and on the longer haul outbound full carloads are secured. There are thousands of growers of cotton in Alabama, Georgia, and Florida, and a substantial portion of them raise but a comparatively small amount, in many cases upon land owned by others and farmed upon basis of a division of the proceeds from the sale of the crop. There are many grades of cotton, and as the mills both in this country and abroad

purchase in lots of 100 bales or multiples thereof and demand even-running grades, it is necessary to have a larger supply to pick from than can be secured at local stations. Sometimes, it appears, it is necessary to pick from as many as 1,000 bales in order to secure 100 of a particular grade. The greater portion of the cotton crop is sold in uncompressed bales and is graded at the concentration and compression points upon samples extracted from the uncompressed bales.

Cotton is one of the principal agricultural products of the country and it appears impracticable that any substantial portion of it can move through from points of origin to final destination in full carloads of compressed bales. Therefore we have not before us simply a question as to the reasonableness of charging the same rate on a commodity when prepared for shipment in such a way that it will furnish a heavy loading and when so prepared that a substantially less loading can be secured, for under the rates, regulations, and practices desired by the complainant the carriers would have to transport uncompressed cotton in less-than-carload lots into, and full carloads of compressed cotton out of, the concentration and compression points.

The complainant desires not only that we require the carriers to "divorce" compression from transportation and to establish lower rates on cotton compressed by or for the shippers than are in effect on cotton compressed at the carriers' expense, but also that we prescribe rules which will prevent discriminations between compresses. This apparently would leave individuals free to erect compresses at any points they might desire, without reference to the carriers' interests, and assumes that the carriers would voluntarily permit, or could be compelled to accord, concentration at such points. But what would be the situation of the growers and buyers of cotton, and even of the compress companies, under such rules? Except in cases where competition justified exceptions, cotton could be concentrated and compressed only at the nearest compress, and there is nothing convincing of record that there would be any satisfactory recourse against unreasonable charges or discriminatory practices by the compress companies. In this connection complainant states in its reply brief that—

We do not ask the Commission to prescribe such rigid or inflexible rules as will prevent shippers, with the cooperation of the carriers, taking away their business from compresses which may unduly favor shippers interested therein; the interests of the compress company, therefore, will demand equality of treatment.

Apparently there were substantial discriminations between shippers as well as frauds against the carriers in the early days of compression, and the testimony of the carriers is that it was to avoid discriminations and to secure uniformity of treatment that the

Atlantic Compress Company was organized and the compression allowances standardized. The cost of a compress plant and of the necessary warehouse is large, and under the rules advocated by the complainant the amount of cotton which could be compressed at a particular point would be automatically reduced, sometimes very considerably, by the erection of an additional compress at a near-by point served by the same carrier or carriers. With reference to this question complainant further states in its reply brief that—

We think this matter one with which the carriers have no direct concern and which they should have no authority to regulate, but that it should be permitted to adjust itself. As stated by Mr. Howard, one of defendants' witnesses, * * *, "commercial conditions have controlled such matters in the past, and there is no special reason why they should not in the future, so that every little point could not spring up as a concentration point."

In the complaint it is alleged:

That the defendants deny to independent compresses patronage on equal terms as accorded to compresses operated by the Atlantic Compress Company, thus throttling those already in existence whose owners decline to sacrifice their property by leasing or selling at less than its value to the Atlantic Compress Company and preventing the erection of compresses at points which would prove not only to the advantage and economy of defendants in transportation, but results to the great disadvantage and injury of many localities that desire through its enterprising citizens to place themselves in position to become points of concentration by the erection of compresses.

Complainant further avers that the transportation companies, in refusing equal privileges to certain towns to erect and operate compresses, concentrate and restrict the markets, thereby injuring the material progress and prosperity of certain sections by impeding and hindering the development of their resources.

The president of the Railroad Commission of Alabama admitted that the only parties who had been before that commission asking for two rates on cotton were those interested in gin compression and in the compress at Union Springs, and the testimony does not sustain the allegations as to discriminatory treatment or the throttling of independent compresses. There is no evidence as to the necessity for additional points of concentration, except, of course, such as referred to Union Springs.

The complainant also alleges that consignors and consignees have no option as to whether or not their cotton shall be compressed. A substantial portion of the cotton shipped to southern mills is transported through uncompressed, the length of the haul not justifying the expense of compression, and the testimony does not indicate that any shipper now having his cotton so handled is desirous of having it compressed en route.

The complainant further contends that the present methods are wasteful and that the condition of the bales when received abroad is very unsatisfactory. When the cotton is put into flat or uncompressed bales the bagging used, which generally is purchased from

the ginner, is of the cheapest grade obtainable, and when it reaches the compression points the bagging is cut, always in two and not uncommonly in several places, in order that samples may be extracted. In compressing the bales the same bagging is used and patches are not only put over the holes made in sampling but are also sewed on in order to bring the total weight of the bagging and ties up to the customary allowance for tare, which on export cotton is 6 per cent, or 30 pounds per bale. Generally the bagging is badly torn by hooks in handling the bales into and out of steamships. There is no evidence that the growers and shippers of cotton have endeavored to secure a general improvement in the class of bagging used or in the amount put on, and the record leaves considerable doubt as to the responsibility of the compress companies, under present methods of bagging and of marketing cotton, for the evils apparently existing.

The Farmers' Gin Compress and Cotton Company manufactures gin compresses, which separate the seed and the lint and put the latter into rectangular bales of a density of 30 pounds to the cubic foot. As stated, this company contended for different rates on compressed and uncompressed cotton on the ground that cotton compressed in its gins would be tendered to the carriers in compressed bales. However, it apparently would be tendered in small lots and, owing to commercial conditions, would have to be concentrated. At the time of hearing there were but few gin compresses in operation in Georgia and Alabama. In view of the withdrawal of the company as intervener it is not deemed advisable to enter into a discussion of the practicability of gin compression.

As stated, the changes asked by the complainants in the rates, regulations, and practices governing the transportation of cotton would affect all parties interested in the growing, compression, and marketing of that staple, and a very slight burden per hundred pounds or even per bale would aggregate a large sum as applied to each crop and apparently would of necessity be borne by the growers. We would not feel justified in running the risk of bringing about such a general increase in transportation or compression charges in an attempt to work out a better system, for practical purposes, than that now in effect, unless we had not only a convincing showing that the present rates, regulations, and practices are unjust and unreasonable or otherwise unlawful, but also adequate evidence upon which to prescribe reasonable rates, regulations, and practices for the future. These and similar matters are now before us in another proceeding on a much more comprehensive record. The showing made in this record does not justify us in condemning the present rates, regulations, and practices as unreasonable or otherwise unlawful, and the complaint in No. 1931 will therefore be dismissed.

No. 8233.

HALE-HALSELL GROCERY COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted March 20, 1917. Decided June 21, 1917.

Former finding that a rental charge of \$5 per car collected by defendants, in addition to the freight charges, on potatoes in carloads, shipped in insulated or refrigerator cars from points in Minnesota and Wisconsin to destinations in Oklahoma, was properly assessed and not shown to be unreasonable, adhered to. Complaint dismissed.

O. W. Tong for intervener.

John F. Finerty for defendants.

REPORT OF THE COMMISSION ON REARGUMENT.

BY THE COMMISSION:

In our former report herein, 42 I. C. C., 491, we held that a rental charge of \$5 per car collected by defendants, in addition to the freight charges, on certain carloads of potatoes shipped in insulated or refrigerator cars from points in Minnesota and Wisconsin to destinations in Oklahoma was properly assessed and not shown to be unreasonable. Upon petition by the Northern Potato Traffic Association, intervener, the case was reopened for further argument, which has been had.

In support of the allegation of the complaint that the rental charge was unreasonable and illegal, in violation of sections 1 and 6 of the act, and the present contention that the Commission erred in its former conclusions, the petitioning intervener avers (1) that the tariffs did not, as required by rule 4 (g) of Tariff Circular 18-A, contain such explanatory statements, in clear and explicit terms, as were necessary to remove all doubt concerning the proper application of the tariff rates and rules; (2) that southwestern lines' tariff I. C. C. No. 969, publishing the carload rates on potatoes from and to the points of origin and destination, did not refer by I. C. C. number, or otherwise, to western trunk lines' circular No. 12, I. C. C. No. A-489, which provided the car rental charge, contrary to rules 3 (e) and 4 (h) of the tariff circular; and (3) that, in disregard of the further requirements of rule 4 (h) the car rental tariff, No. A-489, was not posted or filed at stations of the lines in Oklahoma.

Western trunk lines' circular No. 12, I. C. C. No. A-489, expressly applicable on traffic moving over named lines, including the partici-

pating carriers, in Wisconsin, Minnesota, and other designated territories and in connection with tariffs carrying general note subjecting shipments thereunder to charges and rules as per published tariffs lawfully on file with this Commission, provided for a charge of \$5 per car per trip for a refrigerator or other insulated car ordered by a shipper, to be heated by him or to move without heat.

Southwestern lines' tariff I. C. C. No. 969, which published the car-load potato rates, was governed by western classification I. C. C. No. 8, or reissues thereof, and by southwestern lines' exceptions and rules circular I. C. C. No. 962, or reissues thereof. No. 969 referred to participating carriers' publications "lawfully on file with the Interstate Commerce Commission" for additional charges for specified facilities and services, among which rental for insulated or refrigerator cars was not included. It did not refer by I. C. C. number to the tariff providing for such a charge.

The classification exceptions and rules circular of the southwestern lines' I. C. C. No. 1065, effective when the shipments moved and applicable on traffic to and from points in Oklahoma, with certain exceptions not here material, was a reissue of I. C. C. No. 962, and provided, in substance, that shipments transported under the rates, rules, and regulations prescribed therein and in tariffs subject thereto would be subject to such further charges and allowances as were contained in publications of the participating carriers "lawfully on file with the Interstate Commerce Commission" relating to "car rental" and many other enumerated items.

Rule 3 (e) of Tariff Circular 18-A, to which petitioner refers, requires that the title-page of each tariff shall make—

Reference by name and I. C. C. number to the classification and exception sheets governing the tariff. Following form will be used: "Governed, except as otherwise provided herein, by the ——— classification, ———, I. C. C. No. ———, supplements thereto and reissues thereof; and by exceptions to said classification, ——— I. C. C. No. ———, supplements thereto and reissues thereof." A tariff is not governed by a classification or exceptions thereto except when and to the extent stated on the tariff.

Under that rule, as its language plainly discloses, it is only to the classification and exception sheets by which a particular tariff is to be governed that the reference by name and I. C. C. number must be made; and petitioner concedes that the tariff carrying the potato rates made appropriate reference, conformably to the rule, to the western classification and the southwestern lines' exceptions. The rule does not purport to require that like reference should also be made to a separate tariff publishing charges for facilities or services wholly collateral to the transportation itself and independent of the rates under which the transportation is had.

Those portions of rule 4 (*g*) and (*h*) which the petition brings into question require that each tariff in book or pamphlet form shall contain—

(*g*) Such explanatory statement in clear and explicit terms regarding the rates and rules contained in the tariff as may be necessary to remove all doubt as to their proper application.

(*h*) Rules and regulations which govern the tariff, the title of each rule or regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the rates named in the tariff shall be entered, except that a special rule applying to a particular rate shall be shown in connection with and on the same page with such rate.

No rule or regulation shall be included which in any way or in any terms authorizes substituting for any rate named in the tariff a rate found in any other tariff or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part.

* * * * *

A carrier or an agent may publish, under I. C. C. number, post, and file a tariff publication containing the rules and regulations which are to govern certain rate schedules, and such publication may be made a part of such rate schedules by the specific reference "Governed by rules and regulations shown in ——— I. C. C. No. ———." When a tariff makes reference to another tariff the I. C. C. number of such other tariff must be given, and when such tariff referred to is the publication of another carrier or an agent, the initials of such other carrier or the name of such agent, respectively, must be shown in connection with the I. C. C. number.

A rate schedule may in like manner refer to another schedule for the governing rules and regulations.

A schedule or a publication so referred to must be on file with the Commission and be posted at every place where a schedule that refers to it is posted.

Rule 4 (*g*), as its terms plainly import, requires that every tariff publishing rates or charges shall clearly and explicitly state how those rates or charges, not those carried in other tariffs, shall apply. As above indicated, the tariff carrying the rental charge pointed out to what traffic that charge would apply, and the tariff carrying the transportation rates explained the application of those rates; it was not required or intended that either tariff should perform that office for the other.

The quoted provisions of rule 4 (*h*) make further requirements respecting the rules and regulations which are to govern the application of the tariff rates, but authorize the publication of the rates in one tariff and the rules and regulations in another. In the latter case every such rule or regulation becomes, by the prescribed specific reference, as it is necessary that it should become, part of the rate which it is to govern. The publication containing such rules and regulations must, as further provided, be posted with the rate schedule that so refers to it. These provisions do not require that either publication shall include like reference to other schedules of charges for purely accessorial facilities or services, which do not affect the rates for transportation as such and are wholly apart therefrom.

It is unimportant, therefore, that the car rental schedule was not posted in stations in Oklahoma; it was only necessary that it be posted or filed in the stations of the originating lines, by which the refrigerator cars were furnished.

Dealing with the separate publication of terminal and other charges for facilities and services other than transportation, as contemplated by section 6 of the act, rule 10 (a) provides, among other things:

Each carrier shall publish, with proper I. C. C. numbers, post, and file separate tariffs which shall contain in clear, plain, and specific form and terms all the terminal charges and all allowances, such as arbitraries, switching, icing, storage, elevation, diversion, reconsignment, transit privileges, and car service, together with all other privileges, charges, and rules, which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment, or which increase or decrease the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith, and shall also state whether or not the rate published by the initial carrier from the point of origin to ultimate destination will apply. If the through rate does apply it must be as of the date of shipment from point of origin.

If such privilege is granted or charge is made in connection with the rate under which the shipment moves from point of origin, the initial carrier's tariff which contains such rate must also show the privilege or the charge *or must state* that shipments thereunder are entitled to such privileges and subject to such charges according to the tariffs of the carriers granting the privileges or performing the services, as "lawfully on file with the Interstate Commerce Commission." [Italics interpolated.]

The general reference to further charges and allowances by the note carried in the rate tariff, No. 969, and in the classification exceptions, No. 1065, hereinbefore mentioned, conformed to the concluding provision of the foregoing rule. In such a case reference by I. C. C. number was not and is not required.

In applying the foregoing provisions of the tariff circular to the tariffs here considered the intervening petitioner has failed to distinguish between the rules, regulations, and schedules which govern or affect the transportation rates and those which cover facilities furnished or services rendered apart from or in addition to the transportation itself. The car rental charge was neither in addition to nor a substitute for any rates for the transportation of the potatoes, but solely for the use of a particular type of equipment furnished in addition to the transportation services rendered.

We find nothing to warrant any change in our former findings and conclusions, and an order dismissing the complaint will be entered.

45 I. C. C.

No. 8277.

TRAFFIC BUREAU OF THE TOLEDO COMMERCE CLUB

v.

ANN ARBOR RAILROAD COMPANY ET AL.

Submitted February 17, 1916. Decided July 5, 1917.

Class rates from Toledo, Ohio, to points in the lower peninsula of Michigan not exceeding the appropriate scales formulated in *C. F. A. Class Scale Case*, 45 I. C. C., 254, and rates on petroleum and its products and on drain tile from and to the same points not exceeding, respectively, 90 per cent of contemporaneous fifth-class rates and 85 per cent of contemporaneous sixth-class rates so made, found reasonable. Complaint dismissed.

H. G. Wilson for complainant.

C. D. Chamberlin and *F. W. Boltz* for Paragon Refining Company.

D. P. Connell and *Ernest S. Ballard* for New York Central lines.

John C. Bills for Pere Marquette Railroad Company.

H. S. Bradley for Ann Arbor Railroad Company.

Spencer G. Wagstaff, *Ira W. Gantt*, and *S. L. Strauss* for Grand Trunk Railway system.

F. P. Hawkins for Detroit & Toledo Shore Line Railroad.

Thomas B. Moore and *Beaumont, Smith & Harris* for Michigan Manufacturers Association, interveners.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is the Traffic Bureau of the Toledo Commerce Club, a commercial organization of Toledo, Ohio. By complaint, filed August 27, 1915, it alleges that all class rates and the commodity rates on petroleum and its products and on drain tile from Toledo to points in the lower peninsula of Michigan are unreasonable, unjustly discriminatory, and unduly prejudicial in so far as they exceed the rates authorized by us in *The Five Per Cent Case*, 31 I. C. C., 351. Reparation is asked on behalf of the Paragon Refining Company, a corporation, on certain carloads of oil shipped under the petroleum rates assailed, and on behalf of the Perrysburg Tile and Brick Company on certain carloads of drain tile shipped under the tile rates assailed. The Michigan Manufacturers Association, an organization composed of manufacturers located in various cities of Michigan, intervened in opposition to the complaint.

It appears that with relatively few exceptions the rates in question embody increases exceeding 5 per cent of the preceding rates, in many cases materially higher. Incidentally, complainant observes that the increased class rates were filed to become effective upon less than statutory notice, and contends that, as the increases therein amounted to more than 5 per cent, those rates were so filed without our permission and therefore are illegal. To this contention we can not accede. While our order in *The Five Per Cent Case*, *supra*, which authorized the carriers to make the new rates effective on 10 days' notice, was confined to the rates specified in the report in that case, we subsequently, upon representations by the interested carriers respecting a pending revision of the Michigan class rates involving increases therein in excess of 5 per cent, granted permission to those carriers to file, under our order, rates from northern Ohio to Michigan points in amounts sufficient to clear the revised state rates, although entailing increases of more than 5 per cent. Whether the rates published and filed in response thereto were in excess of those contemplated by our permission, the facts remain that we authorized their publication on 10 days' notice, the schedules were not rejected upon tender or suspended by us, and the increased rates were permitted to become effective. *Brown & Sons Lumber Co. v. L. & N. R. R. Co.*, 37 I. C. C., 507.

Our decision in this case has been withheld pending our report in *C. F. A. Class Scale Case*, 45 I. C. C., 254, in which upon a full record, we have formulated scales of reasonable class rates for application within central freight association territory generally, which the carriers will be permitted to make effective. That case disposes of the question of class rates for the future in the territory here in question, and nothing in this record would lead to different conclusions.

The general basis of rates on petroleum and its products in central freight association territory is 90 per cent of contemporaneous fifth-class rates. Rates on drain tile in Michigan are made on the basis of 85 per cent of the intrastate sixth-class rates, and it appears that some of the rates assailed approximate that percentage relation to the contemporaneous interstate sixth-class rates. Upon this record we are of opinion and find that rates on the commodities in question not higher than those respective percentages of fifth and sixth class rates conforming to our findings in *C. F. A. Class Scale Case*, *supra*, would be reasonable.

While some of the rates assailed might be found to have exceeded those bases, in view of the general readjustment to result from our findings in the case cited, reparation will be denied in this case. An order dismissing the complaint will be entered.

No. 8367.

GREAT WESTERN SAND & GRAVEL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted January 31, 1916. Decided June 27, 1917.

Upon complaint that the maintenance by defendant of a lower rate on sand and gravel in carloads from South Beloit, Ill., to Chicago, Ill., than the rate contemporaneously maintained from South Beloit to Milwaukee, Wis., results in unjust discrimination; *Held*, That the rate adjustment complained of is not shown to be unduly prejudicial. Complaint dismissed.

Frank J. Mulhall for complainant.

Burton H. Atwood for Atwood-Davis Sand Company.

O. W. Dynes and *J. N. Davis* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the sand and gravel business at South Beloit, Ill. By complaint, filed October 2, 1915, as amended, it alleges that the rate of $2\frac{1}{2}$ cents per 100 pounds charged by defendant for the transportation of sand and gravel from South Beloit to Milwaukee, Wis., a distance of 81 miles, is unduly discriminatory as compared with a rate of $1\frac{3}{4}$ cents per 100 pounds contemporaneously maintained by defendant on the same traffic from South Beloit to Chicago, Ill., a distance of 92 miles. A rate of $1\frac{3}{4}$ cents per 100 pounds is asked. Rates are stated in cents per 100 pounds.

Defendant's tariffs do not show South Beloit as a station on its line. The group of industries comprising what is known as South Beloit are located 0.6 of a mile south of the Illinois-Wisconsin state line and are served by defendant and the Chicago & North Western Railway. It is asserted that defendant has considered South Beloit as being within the switching limits of Beloit and accorded it the same rates. Rates on sand and gravel between points in the state of Wisconsin are governed by the distance scale prescribed by the Railroad Commission of Wisconsin. The rate assailed is the rate applicable from Beloit proper, which is less than the rate of 2.61 cents prescribed by the Wisconsin distance scale.

Rates on sand and gravel from stations on the lines of defendant and the Chicago & North Western to Chicago are made on a zone basis. Points in northern Illinois are grouped in what is known as

the inner zone, an average distance of 45 miles, and points in Wisconsin in general are in the outer zone, an average distance of 90 miles, and take a rate of $1\frac{3}{4}$ cents to Chicago. For a number of years the carriers have maintained a differential on this traffic from the outer zone of one-fourth cent over that from the inner zone. The carriers have at different times attempted to increase the rate from these zones as well as to increase the differential, but we have in each instance held that the proposed increase in the differential was not justified. *Sand and Gravel Rates from Wisconsin Points to Chicago, Ill.*, 34 I. C. C., 467; *In re Transportation of Sand and Gravel*, 24 I. C. C., 249. With respect to the Chicago market, complainant is on a rate parity with the points in Wisconsin where complainant encounters its competition in that market, and there is no showing as to how the lower rate to Chicago affects the rate to Milwaukee.

While the allegation of the complaint is that a higher rate from South Beloit to Milwaukee than the rate contemporaneously maintained from the same point to Chicago results in unjust discrimination, the real purpose of the complaint, as stated by complainant's witness at the hearing, is to secure the establishment of a rate which will permit complainant to market its product in Milwaukee. Complainant contends that, because of the lower rates in effect from Barton, Waukesha, Racine, Oconomowoc, Lannon, and North Lake, Wis., to Milwaukee, those points control the market price of sand and gravel in Milwaukee, and that complainant is unable to compete in that market under the present rate adjustment. The average distance from the above-named points to Milwaukee is 28 miles, and the rates on sand and gravel applicable under the Wisconsin distance scale range from 1.5 cents from Waukesha, 20 miles, to 1.8 cents from North Lake, 34.6 miles. In view of the fact that we refused to approve an increase in the differential of one-fourth cent between the inner and outer zones to Chicago, complainant contends that we should establish a rate from South Beloit to Milwaukee one-fourth cent higher than from the points just named. It states that the prevailing price of sand and gravel at Milwaukee is about 90 cents per cubic yard, f. o. b. cars. A cubic yard of sand or gravel weighs approximately 3,000 pounds. Complainant asserts that in order to compete in the Milwaukee market under the present rates it would be forced to sell its product at a pit price of 15 cents per cubic yard. We have repeatedly held that it is not the function of this Commission to equalize commercial conditions or neutralize geographical advantages by such adjustments in rates as will enable a shipper to compete in markets otherwise closed to him. *Connor Lumber & Land Co. v. A., C. & Y. Ry. Co.*, 40 I. C. C., 111, and cases therein cited.

Upon the record we find that the rate adjustment complained of has not been shown to result in undue prejudice against complainant. An order will be entered dismissing the complaint.

No. 8397.¹

GOODNER-MALONE COMPANY ET AL.

v.

MISSOURI, OKLAHOMA & GULF RAILWAY COMPANY
ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 699
AND 702.

Submitted June 30, 1916. Decided June 27, 1917.

All-rail and ocean-and-rail rates on cranberries in carloads from points in Atlantic seaboard territory to Muskogee, Okla., not shown to have been or to be unreasonable or unduly prejudicial. Complaints dismissed.

E. D. Bevitt and *J. E. Noon* for complainants.

H. L. Traber for Missouri, Oklahoma & Gulf Railway Company and its receivers.

R. C. Trovillion for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas and its receiver.

Thomas Bond and *R. R. Lethem* for St. Louis & San Francisco Railroad Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases are related and will be disposed of in one report.

Complainants are Goodner-Malone Company and Muskogee Produce Company, corporations, and Dawson & Thompson, a copartnership, all engaged in the wholesale fruit and produce business at Muskogee, Okla. The complaint in No. 8397, filed October 18, 1915, alleges that defendants' ocean-and-rail rate of \$1 per 100 pounds, also their all-rail rates, on cranberries in carloads from Hanover Farms, Harris, and Lakehurst, N. J., Onset Junction, South Middleboro, and Boston, Mass., New York, N. Y., Philadelphia, Pa., and other eastern points, to Muskogee, were and are unreasonable and unduly prejudicial. Reparation is asked on all shipments moving within the statutory period, and the establishment of rates for the future which will not exceed by more than 2 cents per 100 pounds those contemporaneously maintained to Fort Smith, Ark. The

¹ The proceeding also embraces complaint in No. 8666, Muskogee Produce Company et al. v. Pennsylvania & Atlantic Railroad Company et al.

complaint in No. 8666, filed February 19, 1916, alleges that the all-rail rates on cranberries in carloads from Cookstown, N. J., to Muskogee, are unreasonable, unduly prejudicial, and in violation of the fourth section of the act. Reparation is asked on all shipments moving within the statutory period and the establishment of the same rates for the future as are contemporaneously maintained to Fort Smith. Rates are stated in cents per 100 pounds.

Muskogee is located in the eastern part of Oklahoma, about 50 miles west of the Oklahoma-Arkansas state line, and is 105 miles northwest of Fort Smith. It is served by the Missouri, Kansas & Texas Railway; St. Louis & San Francisco Railroad, hereinafter called the Frisco; Midland Valley Railroad; and Missouri, Oklahoma & Gulf Railway. Fort Smith is located in the extreme western part of Arkansas, 165 miles west of Little Rock. It is served by the Frisco; St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain; Arkansas Central and Fort Smith & Western railroads; Kansas City Southern Railway; and Midland Valley.

The \$1 joint commodity ocean-and-rail rate assailed, which has been in effect continuously since May 27, 1909, is a blanket rate, applying to practically all points in Oklahoma, the only exceptions being a few points adjacent to the Oklahoma-Arkansas state line, where the combinations of intermediate rates make less. There are no joint commodity ocean-and-rail rates to any Arkansas points. Cranberries in carloads are rated fourth class in the official, southern, and western classifications. The joint fourth-class ocean-and-rail rates to Fort Smith are 79 cents from Baltimore, 80 cents from Philadelphia, 81 cents from New York, and 82 cents from Boston, other points in Atlantic seaboard territory taking either the same rates or specified arbitraries higher. The fourth-class ocean-and-rail rate from all of these points to the Oklahoma blanket is \$1.14. All of the above rates apply by way of both the Atlantic and Gulf ports in connection with practically all lines operating through the different Mississippi River gateways and from the Gulf ports.

There are no joint all-rail rates on cranberries to Muskogee or Fort Smith. Rates to the southwest are made through Chicago and the various Mississippi River crossings, using St. Louis as the basing point, the rates being made by the various lines with relation to the St. Louis rates. The fourth-class rates apply to such basing points whether the traffic is destined to Fort Smith or to Muskogee, the lowest combination applying according to the route of movement. While changes in the rates used in making the different combinations have been made in the past few years, the only material changes appear to be the recent increase from 45 cents to 50 cents, in the fourth-

class rate from the east to Memphis and from 35.9 cents to 40.9 cents in the proportional commodity rate from St. Louis to Fort Smith. Proportional commodity rates are published from St. Louis and Memphis to Fort Smith and other points in Arkansas, applying on cranberries originating at various producing points in New Jersey and Massachusetts. In all other instances class rates apply. To Muskogee the lowest combination is based on Chicago, while to Fort Smith it is based on either St. Louis or Memphis. The lowest all-rail available combination from Hanover Farms, Harris, Lakehurst, Boston, Onset Junction, South Middleboro and other specified cranberry producing points in New Jersey and Massachusetts taking same rates to Muskogee is 105.8 cents, and to Fort Smith 84 cents. Rates from Cookstown are 1½ cents higher. From New York rate points the lowest combination to Muskogee is 105.8 cents and to Fort Smith 99 cents. Rates from Philadelphia are 2 cents less than from New York. The lowest all-rail combination from New York and Boston rate points, which includes points in New Jersey and Massachusetts, to Muskogee is 5.8 cents higher than the ocean-and-rail rate. To Fort Smith the lowest all-rail combination exceeds the ocean-and-rail rate from various points in Massachusetts by 3 cents; from New York rate points, by 18 cents.

There is little evidence in the record tending to establish unreasonableness, and complainants' evident grievance is the alleged prejudicial adjustment of rates to Muskogee and Fort Smith. Defendants insist that the rates to Arkansas points are abnormally low, primarily the result of water competition in the early days at Pine Bluff, Little Rock, and Fort Smith. Also that a reduction in the \$1 rate to Muskogee would disrupt the existing blanket adjustment, which they understand to be satisfactory to Oklahoma jobbers, and that reductions elsewhere in that territory would be sought.

Complainants submitted exhibits for the purpose of showing the difference in freight cost in favor of the Fort Smith jobber as against the Muskogee jobber to alleged representative stations in Muskogee trade territory, using carload rates up to Fort Smith and Muskogee and less-than-carload rates beyond. The outbound local rates, however, are not here in issue. The cited all-rail rates to Muskogee were based on St. Louis instead of on Chicago, the latter making 1.3 cents lower, while to Fort Smith the former all-rail rate of 79 cents was used, whereas the rate is now 84 cents. Muskogee jobbers do not handle cranberries in carload lots except during November and December; at other times that territory is usually supplied by jobbers at McAlester, Tulsa, Kansas City, Fort Smith, and other points. The Muskogee jobbers handle about three or four cars annually, and as a rule they are split shipments, purchased by one jobber in con-

junction with others in order to secure the benefit of the carload rate. It was admitted that in no instance were complainants compelled to reduce the price of cranberries or forego a profit on account of the lower freight rates to Fort Smith.

Upon all the facts of record we are of opinion and find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial.

Those portions of Fourth Section Applications Nos. 699 and 702, filed by F. A. Leland, agent, wherein authority is sought to maintain lower rates on cranberries in carloads from Cookstown to Fort Smith than from or to intermediate points, were heard with the complaints.

There are no through all-rail rates from Cookstown to Muskogee, and the lowest combination applies over the route of movement. The combination on St. Louis would make lower than the combination on Fort Smith even on traffic moving through the latter point.

In the movement east of the Mississippi River there is no departure from the rule of the fourth section which prohibits charging a higher rate for a shorter distance than for a longer distance over the same lines. The component from St. Louis to Fort Smith applies by way of several workable routes. Over the Frisco the short-line distance from St. Louis to Fort Smith is 416 miles. The distance from St. Louis to Fort Smith over the Missouri, Kansas & Texas to Muskogee and the Midland Valley beyond is 608 miles, or 146 per cent of the short-line route. By way of the Missouri, Kansas & Texas through Muskogee to Crowder and the Fort Smith & Western beyond it is 634 miles, or 152 per cent of the short-line route. The fourth section issue presented is too broad to be determined upon the record in this case. We accordingly make no finding relative to the fourth section applications, leaving the questions which they present for determination on a more comprehensive record.

An order will be entered dismissing the complaints.

45 I. C. C.

No. 8621.

DAUGHERTY, McKEY & COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted September 20, 1916. Decided June 15, 1917.

Rate on carpenters' molding in carloads, and on mixed carloads of carpenters' molding and lumber, from Thomasville, Ga., to West Palm Beach, Fla., found unreasonable to the extent that it exceeded and may exceed the rate contemporaneously applicable on lumber in carloads. Reparation awarded.

W. E. Gardner for complainants.

Willis H. Fowle for Atlantic Coast Line Railroad Company and Florida East Coast Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are L. L. Daugherty, T. H. McKey, and W. C. McKey, copartners, engaged in the lumber business under the firm name of Daugherty, McKey & Company, at Valdosta, Ga. By complaint, filed January 28, 1916, they allege that the rate of 59.5 cents per 100 pounds charged by defendants for the transportation of a mixed carload of lumber and carpenters' molding from Thomasville, Ga., to West Palm Beach, Fla., in April, 1914, was and is unreasonable and unduly prejudicial. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, which was billed as builders' molding, consisted of unfinished carpenters' molding and lumber, weighing 47,400 pounds, and moved over the Atlantic Coast Line Railroad to Jacksonville, Fla., and the Florida East Coast Railway thence to destination. No joint rate was in effect, and charges were collected in the sum of \$282.03, at the commodity rate on lumber and molding of 7.5 cents to Jacksonville, and the sixth-class rate of 52 cents beyond, governed by the southern classification, minimum 24,000 pounds. The lumber weighed approximately 10,000 pounds and the molding about 37,000 pounds, the separate weights not being more definitely shown. At the time the shipment moved the Florida East Coast, by appropriate reference in its tariff, carried, and still carries, an exception to the classification on lumber from Jacksonville to West Palm Beach, by reason of which the rate on that commodity, in carloads, was and is 10.4 cents, and in less than carloads, one-half of sixth class, or 26 cents. Charges on the lumber portion of the ship-

ment at the less-than-carload rate computed on 10,000 pounds would exceed by \$1.04 the charges at the carload rate based on the carload minimum; but as the exact weight of lumber does not appear, the amount of the overcharge, if any, can not be determined on this record. No tariff exception was made as to molding, and the higher class rate applies.

At the time of movement lumber and moldings in straight carloads were rated sixth class in the southern classification, minima 30,000 pounds and 24,000 pounds, respectively. At present lumber, in carloads, is rated class A; molding, in boxes, bundles, or crates, sixth class; and the minimum on lumber and on molding is 30,000 pounds.

Complainants testify that the unfinished molding, the product of planing mills, is worth from \$6 to \$7 per thousand feet more than lumber, and contend that it is analogous to lumber and should take the lumber rate. They observe that it is the almost universal practice, not only in the southeast but also in the official and western classification territories, to carry molding at the lumber rate and in no instance at an arbitrary of more than 5 cents over that rate. Molding and lumber now take the same rate on all intrastate traffic in Florida. Defendants offered no evidence.

Upon the record we find that the through rate on carpenters' molding, in carloads, and on mixed carloads of carpenters' molding and lumber, from Thomasville to West Palm Beach was, is, and for the future will be, unreasonable to the extent that the portion thereof applicable to the transportation from Jacksonville to West Palm Beach exceeded and may exceed the rate contemporaneously maintained on lumber from and to the same points. This finding is without prejudice to any conclusion we may reach as to classification of lumber and moldings in the general investigation now in progress. We further find that complainants made the shipment as described and paid and bore the charges thereon at the rate herein found unreasonable; that they were damaged to the extent of the difference between the charges paid and the charges that would have accrued on basis of a combination rate of 17.9 cents, herein found reasonable; and that they are entitled to reparation in the sum of \$197.18, with interest.

An appropriate order will be entered.

No. 8638.

FEDERAL BRIDGE COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted July 14, 1916. Decided June 15, 1917.

Charges on seven carloads of parts of an amusement device, known as an "aeroscope," from Waukesha, Wis., to San Francisco, Cal., found to have been legally applicable, with the exception of an overcharge on a shipment of bridge railing, and not shown to be unreasonable or otherwise unlawful. Complaint dismissed.

F. N. Elkinton and *F. L. Hubbard* for complainant.

J. B. Coffey for Atchison, Topeka & Santa Fe Railway Company.

J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the fabrication of structural iron and steel at Waukesha, Wis. By complaint, filed February 10, 1916, it alleges that the charges collected by defendants on seven carloads of structural steel and bridge material, shipped from Waukesha to San Francisco, Cal., during the period from September 5, 1914, to October 17, 1914, inclusive, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipments, which were billed as structural steel, constituted part of the material used in the construction of an amusement device called an aeroscope, which was described as "what amounts to a 250-foot steel bascule bridge journaled near one end on trunnions mounted on a swing bridge turntable, and carrying at the other end a car for passengers." They moved over defendants' lines and charges were assessed on a portion of each carload, except one, at a carload commodity rate of 80 cents applicable on bridge and structural iron and steel; on the one excepted carload, and on the remaining portion of each of the other shipments, at various rates ranging from a commodity rate of \$1.30 on shafting to the second-class rate of \$2.95 on machinery n. o. i. b. n.

Complainant does not attack the measure of the rates charged. Its sole contention is that all the material shipped was similar to structural iron and steel articles used in constructing bridges and that the commodity rate of 80 cents was legally applicable thereto.

The tariff description of bridge and structural iron to which the 80-cent rate was applicable when the shipments moved reads as follows:

Bridge, wharf, gas house, and structural iron and steel, fabricated or unfabricated, consisting of angle bars (with head eye or screw threads), beams, braces, bridge railing, channel, circular frames, columns, floor plates (corrugated), girders, joist hangers, piling, plate (No. 11 and heavier), punched or unpunched, bent or not bent, post caps and bases, pulleys (tank or reservoir), rails, riveted and cast shoes, rivets (not less than $\frac{1}{2}$ inch in diameter), rods (with head, eye or screw threads), sidewalk and floor plates (without glass), truss bars, trusses, tees, tubing, pier, washers, weights, zees.

One car contained 5,740 pounds of wrought-iron pipe on which charges in the sum of \$118.81 were assessed at the fourth-class rate of \$2.07. The defendants admit that this should have been charged for as bridge railing, and that the commodity rate of 80 cents was applicable thereto. There is accordingly an overcharge on this material of \$72.89, which should be refunded to complainant, with interest.

Descriptions submitted by defendants, and not objected to by complainant, show that the other material upon which rates higher than 80 cents were charged consisted of shafts, gears, pulleys, grease cups, and other parts upon which more or less machine work had been done. Upon the whole record we are of opinion and find that, with the exception of the bridge railing, the material upon which rates higher than 80 cents were collected was not included in the tariff provision quoted and that the rates charged thereon were legally applicable and have not been shown to be unreasonable or otherwise unlawful. An order dismissing the complaint will be entered.

45 I. C. C.

No. 8610.

LOOKOUT PAINT MANUFACTURING COMPANY

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

Submitted January 5, 1917. Decided July 6, 1917.

Rate legally applicable on iron ore in carloads from Ontario, N. Y., to Chattanooga, Tenn., not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

O. L. Bunn for complainant.

John M. Sternhagen for New York Central lines.

Edward H. Hart for Cincinnati, New Orleans & Texas Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing mortar colors and dry metallic paint at Chattanooga, Tenn. By complaint, filed January 21, 1916, it alleges that the charges assessed by defendants on a carload of chrome ore shipped in September, 1915, from Ontario, N. Y., to Chattanooga, were illegal, unreasonable, and unduly prejudicial. Charges of \$198, based upon a rate of \$3.60 per net ton, have been paid, and complainant seeks to be relieved from the payment of charges demanded in excess thereof. The complaint is directed against the rate on chrome ore and upon the hearing complainant's evidence was chiefly directed against the rate on that commodity. It being established at the hearing that the commodity shipped was iron ore, complainant sought to attack the rate applicable over the route of movement on iron ore, and, as defendants have offered evidence in defense of that rate, the issue will be considered. Rates are stated in cents per 100 pounds, except as otherwise noted.

The shipment, weighing 110,000 pounds, was described in the bill of lading as chrome ore, and moved as routed over the New York Central lines to Cincinnati, Ohio, and the Cincinnati, New Orleans & Texas Pacific Railway beyond. Charges were assessed on basis of a rate of 18 cents. At the time of movement the rate applicable on chrome ore over the route of movement was a combination rate, composed of a commodity rate of \$2.72 per long ton to Cincinnati and the sixth-class rate, governed by the southern classification, of 29 cents beyond. Contemporaneously a joint commodity rate of 18 cents,

the equivalent of \$3.60 per net ton, applied on that commodity from Ontario to Chattanooga by way of the New York Central lines to Cincinnati and the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway beyond. It developed subsequently to the movement, and complainant now admits, that the commodity shipped was iron ore. The rate legally applicable thereto was a combination rate of \$5.45 per long ton, composed of the sixth-class rate of 16 cents, governed by the official classification, equivalent to \$3.20 per long ton, to Cincinnati and a commodity rate of \$2.25 per long ton beyond. The charges upon this basis amount to \$267.63, so that the shipment was undercharged \$69.63.

It is claimed that the ore was purchased upon representation by the Cincinnati, New Orleans & Texas Pacific that a rate of 18 cents applied. The misquotation of a rate affords no basis for a finding that the rate applied to a shipment is unreasonable. Moreover, the rate referred to appears to have been quoted as the rate applicable on chrome ore. It is asserted that the rate applicable is excessive because it is a combination rate, but this fact, in and of itself, likewise affords no basis for condemning the rate. It is contended that as iron ore is worth materially less than chrome ore it should take no higher rate, and that as the route over which the shipment moved is shorter than the route over which the 18-cent rate on chrome ore applied, the rate on iron ore over the route of movement should not exceed 18 cents. Complainant also refers in this connection to commodity rates ranging from 18 to 25 cents on chrome ore from Ontario to several southern points, some of which apply over distances in excess of the distance from Ontario to Chattanooga; also to rates from Cincinnati to Chattanooga on various other low-grade commodities. These latter rates, with few exceptions, are higher than the \$2.25 factor of the rate on iron ore, but based on average loading estimated by complainant, it is asserted that the per car earnings thereunder are less than the per car revenue accruing to the Cincinnati, New Orleans & Texas Pacific under the rate attacked. Such comparisons do not show that the through charges were unreasonable.

The ore in question was used by complainant as a body and pigment of a low-grade roof paint. The ores ordinarily used by it for this purpose are obtained from near-by points, and the shipment in question was made with a view of experimenting with the Ontario product. Complainant does not anticipate making further shipments from Ontario and is not interested in the future rates from that point.

In rebuttal of the contention that rates on iron ore should not exceed rates on chrome ore, it was shown on behalf of defendants that most of the chrome ore used in this country is imported; that

commodity rates thereon to Chattanooga were originally established from the eastern ports through the Virginia gateways, that at the instance of the southern lines operating to the Ohio River crossings such rates were later made applicable over the routes shown, that there was no occasion for a rate on this commodity from Ontario as no chrome ore is produced in the state of New York, that in the publication of the tariffs the rate was unnecessarily and inadvertently extended to apply from New York rate points, that the commodity rate thereon from Ontario was a subnormal rate, less than the rate from New York to Cincinnati and less than the minimum specific of 20 cents per 100 pounds generally received by the northern lines as their proportion on traffic moving to points south of the gateways named, and that on February 1, 1917, the application of that rate, in connection with the New York Central lines, was canceled. Also that subsequently to the movement, the sixth-class rate from Cincinnati to Chattanooga was increased to 33 cents. The carriers formerly participating in the 18-cent rate on chrome ore contemporaneously maintained a joint class A rate, governed by the southern classification, on iron ore from Ontario to Chattanooga of 36 cents, which was in excess of the combination rate assailed and which has since been increased.

We find that the rate legally applicable to the shipment in issue is not shown to have been unreasonable or unduly prejudicial and the complaint will be dismissed.

An appropriate order will be entered.

45 I. C. C.

No. 8914.

LANGE SOAP COMPANY

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY
COMPANY ET AL.

Submitted November 11, 1916. Decided July 5, 1917.

Complainant ordered from defendants, at San Antonio, Tex., an 8,000-gallon capacity tank car for transportation of a shipment of cottonseed oil to South San Francisco, Cal. A car of that capacity not being available, defendants furnished a tank car of 10,780 gallons capacity, into which complainant loaded 8,005½ gallons of oil. Charges were assessed on the basis of full gallonage capacity of the car furnished, in accordance with tariff provision therefor, and pursuant to the published exception of tank cars from defendants' general provision for assessment of charges on basis of minimum applicable to car ordered by a shipper where a larger car carrying a higher minimum is furnished instead; *Held*, That the charges assessed are not shown to have been unreasonable. Complaint dismissed.

Robert E. Cuff for complainant.

E. H. Thornton for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of soap and the refining of cottonseed oil at San Antonio, Tex. By complaint, filed May 31, 1916, it alleges that the charges collected for the transportation, in October, 1913, of a carload of cottonseed oil from San Antonio to South San Francisco, Cal., were unreasonable. Reparation is asked. The claim was presented to the Commission informally June 19, 1915.

The shipment, which moved over the lines of the Galveston, Harrisburg & San Antonio Railway and Southern Pacific Company, consisted of 8,005½ gallons, equal to 60,000 pounds, of cottonseed oil, for which complainant ordered an 8,000-gallon capacity tank car. A car of that capacity not being available, complainant accepted a larger car upon the assurance of the initial carrier's agent that a minimum of 8,000 gallons would be observed. Charges were properly assessed on basis of 10,780 gallons, the full capacity of the tank car furnished, at an estimated weight of 7.5 pounds per gallon and a rate of 90 cents per 100 pounds.

The allegation of unreasonableness expressly rests upon the published exception of tank cars from defendants' following tariff rule:

Where car of greater dimensions or capacity is furnished charges will be assessed on basis applicable to car of dimensions or capacity ordered by shipper.

Complainant testified that, under the rules of the Interstate Cotton Seed Crushers' Association, approximately 8,000 gallons of cottonseed oil constitute a carload. But before the shipper can quote a price on a carload order it is necessary, under the tariff rule complained of, first to ascertain the size of car the carrier can furnish, and, in case he can not secure a car of the size required for his shipment and must take a larger car, he must ascertain if his customer will accept the larger shipment.

According to complainant's evidence, most of the interstate movement of cottonseed oil is in 8,000-gallon carloads, and complainant has never shipped more. It has had some difficulty in securing from defendants 8,000-gallon capacity equipment. Complainant owns a few 5,000-gallon cars and about 20 of 8,000 gallons' capacity, but frequently all of its cars are en route and it has to call upon the carriers. Defendants' witness testified that they own and operate some cars slightly under and over 8,000 gallons' capacity, which they furnish when convenient. Hosmer's circular in force at the time this shipment moved does not show the defendants as owning any tank cars of the 8,000-gallon class.

Defendants maintain that no discrimination can result from the tariff rule assailed, because its application is general in this originating territory. They insist that it would be a hardship for them to eliminate from their tariffs the exception covering tank cars, for the reason that 90 per cent of the return movement of tank cars generally is empty, and practically 100 per cent in the case of those used to transport cottonseed oil from Texas to California, in this instance a haul of approximately 1,850 miles. Because of the considerable empty movement defendants are building their tank cars larger and basing their charges in all cases upon the full gallonage capacity of the tanks. They add that the elimination of the exception will compel them to furnish their large equipment for small shipments; also that 99 per cent of present shipments are at full capacity of cars used and that shippers have adapted themselves to the existing minimum provision. To the argument that there would arise a demand for equipment for small shipments, complainant replies that there is practically no demand for cars smaller than 8,000 gallons' capacity. There is an extensive movement of this commodity to California from Texas, and it appears that the larger cars might readily be used.

It was testified on behalf of defendants that tank cars not loaded to capacity are singularly susceptible to derailment, due to the wash

of the contents while the car is in motion. This fact is not established of record.

It is true that the provision for the assessment of charges on the full gallonage capacity of tank cars is virtually a publication of graduated minima based upon the varying sizes or capacities of the cars in service. It also is true that our decisions dealing with graduated minima applicable to the ordinary equipment, such as box cars, gondolas, and flat cars, have been to the effect that in such cases the publishing carriers offer such equipment for the accommodation of traffic at the applicable carload rates and minima, and therefore that, if in any case unable to furnish seasonably a car of the particular size ordered by a shipper, they must furnish a larger car and observe the minimum applicable to the car ordered. While the bases of those rulings have been that the law requires the carrier to make good its offer of equipment at the published carload rates and that otherwise discrimination as between different shippers might result, it is quite apparent that, with the variety of the ordinary standard equipment generally in possession of or available to the individual lines, the utilization of the larger car at the minimum applicable to the smaller one would be the exception rather than the rule. In the case of this special equipment the shippers' rule adopting 8,000 gallons as a standard carload in the trade indicates that defendants' tank cars of larger capacity would ordinarily, if not invariably, move under partial loads. The result would be a marked waste of transportation equipment. Every consideration of economy, if not of safety, demands the movement of tank cars under full loading, and provision therefor appears to be quite general. Whatever conclusion we might feel constrained to reach upon an exhaustive record, we could not, upon the record in this case, condemn the exception here assailed. We therefore find that the charges assessed are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 8665.

C. C. MENGEL & BRO. COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted May 19, 1916. Decided June 27, 1917.

Rate for the transportation of rough mahogany lumber in carloads from Louisville, Ky., to Pensacola, Fla., for export, found to have been unreasonable. Reparation awarded.

J. E. Hannon for complainant.

E. H. Dulaney for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of mahogany lumber and veneers at Louisville, Ky. By complaint, filed January 31, 1916, it alleges that the rate charged by defendant for the transportation of six shipments, loaded in seven cars, of rough mahogany lumber from Louisville to Pensacola, Fla., for export, on December 15, 1913, and December 19, 1913, was unreasonable and unjustly discriminatory. Reparation is asked. The claim was presented to the Commission informally December 21, 1914. Rates are stated in cents per 100 pounds.

One of the shipments could not be loaded into one car and the excess, which was less than a minimum carload, followed in another car, the tariff providing for assessing charges thereon at the less-than-carload rate. The shipments aggregated 300,375 pounds and moved over defendant's line to Pensacola, from which port they were transhipped to foreign destinations. Charges were collected from Louisville to Pensacola in the sum of \$699.44 at the domestic rate of 23 cents on the carload shipments and 50 cents on the less-than-carload shipment. Defendant's tariffs contain follow-lot rules, but they do not apply on bulk freight of which the shipments consisted. The less-than-carload rate was legally applicable and no evidence was presented with respect thereto. No export rates are provided from Louisville to any Gulf port on less-than-carload shipments of lumber destined to England or Scotland.

Complainant showed that for a long time prior to May 1, 1913, the export rates on lumber in carloads from Louisville and other Ohio River crossings to the Gulf ports by way of various lines, including

defendant's, were 15 cents. On that date defendant discontinued the 15-cent export rates, leaving the domestic rates to apply. On March 15, 1914, the lines operating from Ohio River crossings to Gulf ports other than Pensacola increased the carload export rates from 15 cents to 20 cents and on November 15, 1914, these latter rates were made applicable by way of defendant's line from Louisville to various Gulf ports, including Pensacola. It is a one-line haul by way of defendant's line from Louisville to Pensacola, Mobile, Ala., and New Orleans, La., 653 miles, 670 miles, and 809 miles, respectively. Effective February 8, 1915, the carload rates from Louisville to the Gulf ports were increased to 21.3 cents in order to line them up with increased rates from central freight association territory and Ohio River crossings to the east, following the *Five Per Cent Case*, 31 I. C. C., 351, and 32 I. C. C., 325, and these rates are still in effect.

Complainant asks reparation on basis of the 20-cent rate. Defendant admits that the rate charged was unreasonable as applied to export traffic and is willing to make reparation on the basis sought.

We find that the carload rate assailed was unreasonable when applied to export traffic to the extent that it exceeded 20 cents per 100 pounds; that complainant made the above-described carload shipments and paid and bore charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainant should prepare a statement in accordance with rule V of the Rules of Practice, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

As the 20-cent rate was established November 15, 1914, and as the rate of 21.3 cents has been in force for more than two years, no order for the future will be entered.

No. 8769.

PAGE & HILL COMPANY

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted October 5, 1916. Decided June 21, 1917.

A carload of posts from Boy River, Minn., to Arnegard, N. Dak., found to have been overcharged and misrouted. Reparation awarded.

Norman E. Boucher for complainant.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Minneapolis, Minn. By complaint, filed April 3, 1916, it alleges that the rate of 41.95 cents per 100 pounds charged by defendants on a carload of posts shipped May 11, 1914, from Boy River, Minn., to Arnegard, N. Dak., was unreasonable and unjustly discriminatory to the extent that it exceeded 39 cents per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

Boy River is on the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereafter called the Soo line, about 133 miles west of Duluth, Minn. Arnegard is in western North Dakota on the Great Northern Railway.

The shipment was routed by complainant by way of the Great Northern, but without the specification in the bill of lading of any rate or junction point through which it should move. It moved by way of the Soo line to Bemidji, Minn., and the Great Northern thence to destination, 559 miles. Charges were collected in the sum of \$167.80, at a rate of 41.95 cents based on a weight of 40,000 pounds. The actual weight of the shipment was 27,920 pounds. The car used was 34 feet 4 inches long and the minimum provided by defendants' tariffs for a car of that length was 30,000 pounds. Complainant, however, ordered a 33-foot car, which apparently could have accommodated the shipment. Defendants' tariffs provided a minimum of 24,000 pounds for 33-foot cars and for the application of the minimum weight for the size of the car ordered, actual weight if greater, provided the car ordered could contain the shipment. A combination rate of 42.5 cents was legally applicable over the route the shipment moved: 6½ cents to Bemidji, 28 cents to Mondak, Mont., and 8 cents

beyond, plus a switching charge of \$3 of the Minnesota & International Railroad at Bemidji. The correct charges over the route of movement were \$121.66, so that the shipment was overcharged \$46.14.

When the shipment moved a combination rate of 39 cents, minimum 24,000 pounds for cars of the size ordered, was applicable by way of Minot, N. Dak., composed of a rate of 23 cents from Boy River to Minot by way of the Soo line, and a rate of 16 cents beyond, by way of the Great Northern, 578 miles. Complainant contends that the shipment was misrouted by the initial carrier.

Defendant Soo line denies that the shipment was misrouted. It states that the route in connection with the Great Northern at Bemidji is the one ordinarily used, and contends that it should not be expected to know the various distance rates of the Great Northern or what combination rates would apply by way of the various junction points with that carrier.

The record does not disclose that the initial carrier's agent at Boy River made any effort to ascertain which was the cheapest route, consistent with the routing instructions specified by the shipper. Apparently it is that carrier's practice to forward all unrouted shipments from Boy River to points on the Great Northern by way of Bemidji. The route in connection with the Great Northern at Minot was a reasonable one and the agent of the Soo line should have so routed the shipment.

We find that the charges collected were illegal to the extent that they exceeded the charges that would have accrued at a rate of 39 cents per 100 pounds based on the actual weight of 27,920 pounds; that complainant made the shipment as described and paid and bore the charges thereon herein found to have been illegal; that it has been damaged and is entitled to reparation in the sum of \$58.91, with interest, \$46.14 from both defendants on account of the overcharge described, and \$12.77 on account of misrouting, for which we find the Minneapolis, St. Paul & Sault Ste. Marie Railway Company to have been responsible.

An order will be entered accordingly.

No. 8868.

JOHN DULWEBER COMPANY

v.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
ET AL.

Submitted November 9, 1916. Decided July 5, 1917.

Rate on secondhand sawmill machinery in carloads from Nettleton, Ark., to Moorhead, Miss., not found unreasonable or unduly prejudicial. Complaint dismissed.

J. H. Townshend for complainant.

J. L. Sheppard for Yazoo & Mississippi Valley Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing lumber, with its principal office at Cincinnati, Ohio. By complaint, filed May 8, 1916, it alleges that the rate of 53 cents per 100 pounds, charged by defendants on eight carloads of secondhand sawmill machinery from Nettleton, Ark., to Moorhead, Miss., during the period from May 23, 1913, to June 25, 1913, inclusive, was unreasonable and unduly prejudicial to the extent that it exceeded $35\frac{1}{3}$ cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally April 30, 1915. Rates are stated in cents per 100 pounds.

The shipments were delivered to the St. Louis & San Francisco Railroad, hereinafter called the Frisco, at Nettleton consigned to Moorhead and routed by way of the Yazoo & Mississippi Valley Railroad, hereinafter called the Yazoo. No rate was inserted in the bills of lading. The shipments moved over the Frisco to Memphis, Tenn., and the Yazoo beyond. Seven of the shipments aggregated 278,000 pounds, and transportation charges were collected thereon in the sum of \$1,473.40 at the legally applicable combination rate of 53 cents, composed of the class A rate of 24 cents to Memphis, and the sixth-class rate of 29 cents beyond, these rates being governed, respectively, by the western and southern classifications. The other shipment weighed 24,000 pounds and transportation charges were collected thereon in the sum of \$159.60. There is an overcharge of \$32.40 on this shipment, which should be promptly refunded.

A joint rate of $35\frac{1}{3}$ cents contemporaneously applied from Nettleton to Moorhead over the Frisco to Memphis and the Yazoo in connection

with the Southern Railway in Mississippi as the delivering line beyond. Complainant contends that the shipments should have been turned over by the Yazoo to the Southern Railway in Mississippi at an intermediate point for transportation by the latter carrier to destination, and that they were therefore misrouted.

The carriage of the shipments over the route they moved complied with complainant's routing instructions. The shipments, therefore, were not misrouted.

The distance from Nettleton to Moorhead over the route of movement is 189 miles; over the Frisco, the Yazoo, and the Southern Railway in Mississippi about 15 miles greater. Complainant cited relatively lower rates on secondhand sawmill machinery from Milwaukee, Wis., Chicago, Ill., and Missouri and Ohio river crossings to Moorhead. These rates are not comparable with the rate assailed. Complainant stated that these shipments constituted part of a dismantled sawmill; that it did not expect there would be any similar shipments from Nettleton in the future; and that it was not interested in the rate for the future.

Defendants explained that the 35 $\frac{1}{2}$ -cent rate resulted from the extension to interstate traffic of a low basis of rates prescribed on intrastate traffic. Since these shipments moved this rate has been canceled, and a rate of 53 cents applies over the route in connection with the Southern Railway in Mississippi as well as over the route of movement. Defendants showed that the general basis for sawmill machinery in this territory is substantially sixth class.

We find that the rate assailed is not shown to have been unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.

No. 8877.

ACME CEMENT PLASTER COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted October 23, 1916. Decided July 7, 1917.

Rates on carloads of portable track and miscellaneous articles used in connection with the mining of gypsum rock, shipped from Winslow, Ariz., to Acme, Cal., found to have been and to be unreasonable. Reparation awarded.

Sam H. West for complainant.

James B. Coffey for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of gypsum products, with its principal office at St. Louis, Mo. By complaint, filed May 15, 1916, it alleges that the charges collected by defendants for the transportation in December, 1914, of a carload of emigrant outfit and two carloads of portable track and miscellaneous articles used in the mining of gypsum rock, from Winslow, Ariz., to Morrison, Cal., now called Acme, were unreasonable. Reparation is asked.

Winslow is a local point on the main line of the Atchison, Topeka & Santa Fe Railway. Acme is a local point on the Tonopah & Tidewater Railroad, 85 miles north of Ludlow, Cal. The shipments moved over the lines mentioned by way of Ludlow, a total distance of 493 miles. One car contained an emigrant outfit weighing 12,640 pounds. The second car contained 37,490 pounds of portable track, in sections; four dump cars, knocked down; one 10-foot galvanized-iron tank; two drag scrapers; one anvil; one bundle of rope; one portable forge; one cookstove; one farm wagon; old lumber; two farm trucks and eight shovel forks aggregating 7,070 pounds. The third car contained portable track, in sections, the weight of which is not shown; four dump cars, knocked down; one plow; one drag scraper and picks and shovels aggregating 4,555 pounds. There were no joint rates in effect and charges were assessed at the class rates, governed by the western classification, to and from Ludlow, Cal. The emigrant outfit was charged class B rates, minimum 20,000

pounds. This rating was limited to apply to shipments valued at not to exceed \$10 per 100 pounds, and so noted on the bill of lading. The bill of lading covering this shipment is not of record. The fifth-class rates, minimum 36,000 pounds, were assessed on the portable track. All the other articles were charged for at class rates ranging from double first class to fourth class, applicable on these articles in less than carloads. The charges on the car containing the emigrant outfit were \$192, and on the other two cars \$709.35 and \$615.82, respectively. The components of the combination class rates assessed and legally applicable were as follows:

	1	2	3	4	5	A	B
Winslow to Ludlow.....	1.57	1.33	1.10	0.98	0.90	0.90	0.63
Ludlow to Acme.....	.85	.79	.68	.58	.51	.39	.33

The combination class B rates charged on the emigrant outfit and the fifth-class rates charged on the track yielded, respectively, 3.89 cents, and 5.72 cents per ton-mile.

The complaint is based upon two grounds: (1) That the rates themselves were unreasonable to the extent that they exceeded 50 cents per 100 pounds for the through movement, and (2) that the classification did not provide a carload rating applicable to the two carloads of track and other articles.

At the time of movement an exception to the western classification, applicable over the route of movement, contained the following item: Graders', bridge builders', and contractors' outfits, second-hand, min. wt. 24,000 lbs., c. 1. class A.

NOTE.—Applies only on tools, tents and tent fixtures, grading machines, machinery, dump cars, wagons, wheelbarrows and live stock, not exceeding a total of ten (10) head of horses, mules or oxen. Agents will issue the usual form of live-stock contract.

Gypsum rock is found on the surface and the equipment used in mining it is similar to that used in grading work. Complainant contends that all the articles in the two cars which contained the track constituted a grader's outfit and should have been included in the description quoted. At the time of movement the western classification rated graders', bridge builders', and contractors' outfits in carloads, class A, and the description of those outfits was practically the same as that quoted, except that it did not include dump cars. Effective October 15, 1915, the description of these outfits in the western classification was amended to include dump cars and rails. On April 9, 1916, the item quoted was eliminated from the exception, leaving the classification item to apply.

With particular reference to the emigrant outfit, complainant cited a rate of \$1 per 100 pounds applicable on similar outfits from Albuquerque, N. Mex., to San Francisco and Los Angeles, Cal. Comparison was also made of the class rates applicable on graders' and contractors' outfits from Winslow to Morrison with rates on similar outfits from Memphis, Tenn.; Omaha, Nebr.; and St. Louis and Kansas City, Mo., to various points in Kansas, Missouri, Oklahoma, Texas, New Mexico, and Colorado for approximately the same or greater distances, which were materially lower. It appears that those rates apply under transportation conditions which are substantially dissimilar from those here presented.

Many of the miscellaneous articles loaded in the cars with the track might have been included in the emigrant outfit and transported without additional charge to complainant, as the weight of the outfit shipped was 7,360 pounds less than the carload minimum.

Defendants showed that these shipments were the first, and probably would be the last, of their kind between these points and contend that, therefore, they would not be justified in establishing commodity rates. They stated that the class rates to Ludlow were the same as the distance class rates approved by the Arizona Corporation Commission for the same distance in Arizona. These rates were established on July 1, 1913, prior to which higher rates, on the basis of \$1.74 first class, were in effect. Defendants also pointed out that this territory is very sparsely populated and presents extremely difficult operating conditions. With regard to the class rates applicable on the Tonopah & Tidewater Railway, the defendants cited the *Goldfield Cases*, 34 I. C. C., 360, in which class and commodity rates over this road and others in the same territory materially higher than the rates for like distances in many other parts of the country were found justified.

We find that the class rates in issue are not shown to have been unreasonable, but that all of the articles shipped except the emigrant outfit should have been included in the item "graders', bridge builders', and contractors' outfits, second-hand," in the exception to the western classification, and that the rates assessed thereon were, are, and for the future will be, unreasonable to the extent that they exceeded and may exceed the rates contemporaneously applicable to such outfits.

We further find that the complainant made the shipments as described, and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid on the portable track and other miscellaneous articles exceeded those herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and com-

plainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered. This order is not to be understood as requiring the specific enumeration of all the articles comprised in these shipments. The fact that different outfits seldom contain exactly the same articles makes it necessary that tariff descriptions thereof should be somewhat general in character.

No. 8954.

SWIFT & COMPANY

v.

ERIE RAILROAD COMPANY.

Submitted November 9, 1916. Decided July 6, 1917.

Rate on imported fresh meat in carloads from ship side, Brooklyn, N. Y., to Jersey City, N. J., not found to have been unreasonable or otherwise unlawful. Complaint dismissed.

R. D. Rynder for complainant.

M. B. Pierce for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the packing-house business, with its principal office at Chicago, Ill. By complaint, filed June 2, 1916, it alleges that the defendant's rate of 8 cents per 100 pounds on various carloads of imported fresh meat from ship side, Brooklyn, N. Y., by car float to Long dock, Jersey City, N. J., and thence by rail to Jersey City local station, during the period from December 5, 1913, to February 1, 1915, inclusive, was unreasonable and unlawful to the extent that it exceeded a proportional rate of 3 cents per 100 pounds, plus \$3 per car. Reparation is asked. The claim was presented to the Commission informally November 18, 1915. At the hearing the complaint was amended to include an allegation that the rate of 8 cents exceeded the aggregate of the intermediate rates contemporaneously in effect and to that extent was

unreasonable. Alternative reparation is asked on the basis of the combination rate of 3 cents, plus \$10 per car, in the event the 8-cent rate is held to have been legally applicable. Rates are stated in cents per 100 pounds.

The shipments, aggregating 12,662,486 pounds, consisted of fresh meat imported from South America. They were delivered to defendant from ship side at the New York Dock Company piers, Brooklyn, loaded into refrigerator cars on car floats, and towed to defendant's float bridges at Jersey City, known as Long dock. The cars were switched by defendant from the car floats to the Jersey City local station and delivered at adjoining cold-storage warehouses. Charges were assessed on basis of defendant's local third-class rate of 8 cents. At the time of movement there was in effect a tariff containing proportional rates applying on freight of all kinds, except coal and coke, handled between various terminals in New York harbor, subject to the following condition, "will apply only on freight arriving at Jersey City, N. J., over the Erie Railroad or lines named herein." The other lines named were part of the Erie system. The tariff provided an any-quantity rate of 6 cents, applicable between Jersey City local station and Brooklyn terminals, and, on carload shipments of 10,000 pounds or over, a rate of 3 cents, plus \$3 per car. The application of the latter rate was conditioned as follows: "Will apply as proportional rate to or from Jersey City, N. J., on shipments destined to or coming from points where there are no legally published through rates applying to or from stations named herein or including lighterage deliveries." Complainant contends that the latter rate was legally applicable to the shipments.

Defendant insists that under a reasonable interpretation of the language used the tariff would not apply to such a transportation service as this; that all rates named therein would "apply only on freight arriving at Jersey City over the Erie Railroad or lines named"; and that the limitation meant that the rates would apply only on freight which had arrived over the Erie lines at the Erie's Jersey City terminal previous to the Erie furnishing the service covered by the proportional tariff, i. e., freight which had paid the Erie Railroad one revenue. Defendant's witness refers to express limitations in former issues of this tariff and cites their limitation as applying "to shipments which have paid Erie one revenue and are rebilled between the stations and terminals at New York." Since the present claims were brought to the defendant's attention the proportional tariff has been amended to restrict the application of the proportional rates to shipments originating west of Croxton, N. J. A specific commodity rate of 6 cents applicable on this traffic was subsequently established, effective July 9, 1915.

The complainant contends that the tariff, whatever may have been the intention of the framer, was not restricted to eastbound movements; that the term "proportional rates," as referred to in section 6 of the act, covers the inland portion of import or export traffic; and that the intent of the framer of a tariff does not control its application, relying on *Newton Gum Co. v. C., B. & Q. R. R. Co.*, 16 I. C. C., 341.

The movement is not such as would entitle the shipments to the proportional rate claimed by complainant. A proportional rate means a part of or a remainder of a through rate, or it means nothing at all. *Kansas City Transportation Bureau v. A., T. & S. F. Ry. Co.*, 16 I. C. C., 195, 201. Complainant would have us say that a proportional rate applicable only on traffic "arriving" at Jersey City over the Erie Railroad was also applicable as a proportional rate on traffic from South America "going to" Jersey City and no farther. We find that the rate assailed was legally applicable.

Complainant's contention that the 8-cent class rate charged was unreasonable to the extent that it exceeded a rate of 3 cents, minimum 20,000 pounds, from Baltic terminal, Brooklyn, to Long dock, Jersey City, and a local switching charge of \$10 per car from Long dock to Jersey City local station is untenable, inasmuch as the 3-cent factor was published in the tariff discussed above and found inapplicable to this traffic.

The complainant offered no evidence which would warrant a finding that the rate assessed was unreasonable to the extent that it exceeded the subsequently established rate of 6 cents.

An order dismissing the complaint will be entered.

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No. 8941.

STANDARD OIL COMPANY (CALIFORNIA)

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted December 5, 1916. Decided June 21, 1917.

Rate on tin can faucets and tin caps for cans in carloads from Brooklyn, N. Y., to Richmond, Cal., found to have been unreasonable. Reparation awarded.

S. G. Casad for complainant.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in refining and marketing petroleum and its products at San Francisco, Cal. By complaint, filed July 7, 1916, it alleges that defendants' fourth-class rate of \$2.25 per 100 pounds on a carload of tin can faucets and tin caps for cans, shipped May 27, 1914, from Brooklyn, N. Y., to Richmond, Cal., was unreasonable and unduly prejudicial to the extent that it exceeded a commodity rate of 85 cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally May 27, 1915. Rates are stated in amounts per 100 pounds.

The shipment consisted of 180 barrels of tin can faucets and 20 barrels of tin caps for cans, and weighed 41,500 pounds. It moved over defendants' lines, and charges were collected in the sum of \$933.75 at the legally applicable fourth-class rate of \$2.25.

Prior to February 9, 1914, a commodity rate of 85 cents applied from Brooklyn to Richmond over the route of movement on "tin can stock (consisting of tops, bottoms, sides, breasts, handles, and chain cut to length not exceeding 1 foot) packed flat or nested, boxed or crated; and iron hoops for tin can stock, minimum carload weight 40,000 pounds." On the date mentioned this item was amended, following a request by complainant, to include "combined caps and spouts, boxed." It appears that complainant's request was for the application of the rate mentioned to combined caps and spouts and also to caps, spouts, and tin faucets; and on September 14, 1914, the item quoted was further amended to include the articles last mentioned, boxed. The tariffs provided that the rate on boxed shipments would apply to shipments in barrels. This

shipment moved after combined caps and spouts had been included in the item and before caps and faucets had been added.

The 85-cent rate was and is the rate to California terminals. On July 15, 1915, following *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, the rate from Brooklyn to Richmond, a point intermediate to California terminals, was increased to \$1.06, which rate is now in effect and applies to all the articles which were included in the item on September 14, 1914.

A witness for the Atchison, Topeka & Santa Fe Railway, the only defendant represented at the hearing, stated that the failure to add caps and faucets to the item above quoted on February 9, 1914, was the result of an error in tariff compilation. He admitted that the rate charged was unreasonable to the extent that it exceeded the rate contemporaneously applicable to articles similar to those here involved, which were included in that item, and expressed willingness on behalf of the carrier named to make the reparation asked.

We find that the rate assailed was unreasonable to the extent that it exceeded the rate contemporaneously applicable on tin can stock from and to the points involved; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$581, with interest.

An order awarding reparation will be entered, but as a rate on caps and faucets not in excess of the rate contemporaneously applicable to tin can stock has been maintained for more than two years, no order for the future is necessary.

No. 8962.

GEORGE E. MARKLEY & COMPANY

v.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY ET AL.

Submitted November 10, 1916. Decided July 6, 1917.

Refrigeration charges assessed on a carload of peaches from Sale Creek, Tenn., to Cincinnati, Ohio, reconsigned to Dayton, Ohio, found to have been in accordance with the published tariff and not shown to have been unreasonable. Complaint dismissed.

F. M. Renshaw and G. M. Freer for complainants.

F. D. Claggett and H. K. Crafts for Cincinnati, New Orleans & Texas Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are George E. Markley and Charles C. Oyler, copartners, engaged in the fruit and produce business at Cincinnati, Ohio, under the firm name of George E. Markley & Company. By complaint, filed June 6, 1916, they allege that the charges demanded by defendants for the refrigeration of a carload of peaches shipped August 3, 1914, from Sale Creek, Tenn., to Cincinnati, reconsigned to Dayton, Ohio, are unreasonable and illegal. The cancellation of an alleged undercharge of \$3.10 is asked. The Cincinnati, New Orleans & Texas Pacific Railway was the only defendant represented at the hearing, and it is hereinafter called the defendant.

The shipment was originally consigned to Cincinnati, where it was purchased by complainants and reconsigned to Dayton.

At the hearing it was agreed that the sole question in issue is one of tariff interpretation. The tariff governing provided a refrigeration charge of 10 cents per 6-basket crate, Sale Creek to Dayton, in connection with which the following minimum rule was provided:

The minimum refrigeration charge on peaches in six-basket crates will be for 535 crates, unless carrier, for its own convenience, furnishes cars of 38 feet 8 inches in length, in which case the minimum refrigeration charge will be for 525 crates; further, if carrier, for its own convenience, furnishes cars of 36 feet 8 inches or less, in length, the minimum refrigeration charge will be for 476 crates.

The refrigerator car used, F. G. E. 24215, which was furnished at the convenience of defendant, was 40 feet in length, outside meas-

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urement, and 32 feet 5 $\frac{7}{8}$ inches, inside measurement. It contained 504 crates, weighing 21,168 pounds. Complainants contend that the rule above quoted should be construed to refer to inside dimensions; that consequently the refrigeration minimum for the car used is 476 crates; that the refrigeration charges should be based upon the actual number of crates and that no undercharge exists. Defendant, on the other hand, insists that the rule refers to outside dimensions and that the refrigeration charges should be based upon the minimum of 535 crates, specified for a car 40 feet in length.

Defendant states that because of this complaint the rule was amended effective August 10, 1915, to provide specifically that the stated dimensions refer to outside measurement.

The Fruit Growers Express contracts with certain railroads to furnish them with refrigerator cars for the handling of perishable traffic and to attend to the initial icing and re-icing of such cars. Under its contract with defendant for the furnishing of cars for peaches it receives from the railroad an amount equal to the published refrigeration charge. All Fruit Growers Express cars are 40 feet in length, outside measurement. Both the general manager of the Fruit Growers Express and defendant's assistant general freight agent testified that with respect to shipments in Fruit Growers Express cars the minimum of 535 crates has always been used in assessing refrigeration charges and that with the exception of the present instance no question has ever arisen with respect to the proper minimum to be applied. The rule in question has been in effect since July 6, 1913.

There are no refrigerator cars 40 feet in length, inside measurement, and to say that the dimensions specified refer to inside measurement would apparently leave the 535-crate minimum without effect. Previous to the establishment of the rule in question, the minimum was 535 crates regardless of the size of the car. It was testified that the purpose of the rule was to take care of instances where, as in times of car shortage, the carrier for its convenience furnished other than Fruit Growers Express cars.

We find that the dimensions specified in the tariff rule under consideration refer to the outside measurement, and that the refrigeration charges assessed are not shown to have been illegal or unreasonable.

An order dismissing the complaint will be entered.

No. 8970.
HARRIS GRANITE QUARRIES COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted March 2, 1917. Decided July 6, 1917.

Rate on rubblestone in carloads from Granite Quarry, N. C., to Wyndmoor, Pa., not shown to have been unreasonable. Complaint dismissed.

Arthur B. Hayes for complainant.
Alexander M. Bull for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the granite and stone business at Granite Quarry, N. C. By complaint, filed June 23, 1916, it alleges that the rate of \$3 per net ton charged by defendants for the transportation of 15 carloads of rubble stone from Granite Quarry to Wyndmoor, Pa., during the period from June 21, 1915, to July 7, 1915, inclusive, was unreasonable to the extent that it exceeded \$2.52 per net ton. Reparation is asked. Rates are stated in amounts per net ton.

Wyndmoor is a local station on the Germantown and Chestnut Hill branch of the Philadelphia & Reading Railway, hereinafter called the Reading, 10 miles north of that carrier's Philadelphia, Pa., terminal. The shipments moved over the Southern Railway to Potomac Yard, Va.; Baltimore & Ohio Railroad to Park Junction, Pa.; and Reading to destination, 459 miles. Charges were collected at the applicable joint through commodity rate of \$3, minimum 40,000 pounds. On November 22, 1915, this rate was voluntarily reduced to \$2.52, the present rate. The \$3 rate yielded 6.5 mills per ton-mile, and based on the average weight of these shipments, 99,340 pounds, 32.5 cents per car-mile; the \$2.52 rate would have yielded 5.5 mills per ton-mile and 27 cents per car-mile.

Complainant shows that at the time of movement a rate of \$2.52 applied on rubblestone, in carloads, from Granite Quarry to various stations in Philadelphia on the Reading. Reference was also made to the divisions accruing to the lines north of Potomac Yard under the former and the present rates to Wyndmoor.

Defendants deny that the rate charged was unreasonable. They show that the Philadelphia switching limits of the Reading extend north on the Germantown-Chestnut Hill branch to Nicetown, Pa., which is 5.7 miles south of Wyndmoor, and that at the time of movement the \$2.52 rate did not apply to any point on this branch line outside of the Philadelphia switching district.

We find that the rate assailed is not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 7223.

MOORE-SEAVER GRAIN COMPANY ET AL.

v.

UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted September 29, 1916. Decided July 6, 1917.

Former findings that the charges on corn and oats, in carloads, from points in South Dakota, Minnesota, and Iowa to Kansas destinations, stopped in transit at Kansas City, Mo., were not shown to have been in excess of the lawful tariff charges, affirmed on rehearing. Complaint dismissed.

H. G. Wilson for complainants.

H. A. Scandrett, L. T. Wilcox, F. S. Hollands, R. B. Scott, and John F. Finerty for defendants.

REPORT OF THE COMMISSION ON REARGUMENT.

BY THE COMMISSION:

Our original report herein appears in 38 I. C. C., 682. The complaint alleged that the rates charged by defendants for the transportation of corn and oats originating at points in South Dakota, Minnesota, and Iowa, and stopped at Kansas City, Mo., in transit, to points on the Union Pacific Railroad in Kansas, were unreasonable, unjustly discriminatory, and in excess of the lawful tariff charges. Reparation was asked. The Chicago, Burlington & Quincy and the Chicago Great Western railroads moved the shipments into Kansas City, where they were unloaded into elevators located on the tracks of the latter carrier and the Kansas City Southern Railway, and after being cleaned and mixed were switched to the Union Pacific for delivery at Kansas destinations. Joint rates applied on grain from the

points of origin to destinations by way of Kansas City. The tariffs of the carriers bringing the grain into Kansas City made no provision for transit on westbound grain at Kansas City. The Union Pacific's transit tariff provided for transit at stations on its lines. The tariff further provided that the through rate from point of origin to point of destination would be protected when the transit point lies directly intermediate. Kansas City is so situated. Complainants contended that as Kansas City is a station on the Union Pacific the joint rates should apply with the transit accorded at Kansas City. We found that the Union Pacific tariff which authorized transit at stations on its lines did not authorize transit at industries not reached by Union Pacific tracks, and that the joint through rates, therefore, were not legally applicable to the shipments. On July 6, 1916, the case was reopened on complainants' request for further argument, which has been had.

Upon reargument the complainants again urged that, as Kansas City is a station on the Union Pacific, the joint through rates were applicable. Nothing was presented which convinces us that our former interpretation of the tariffs was incorrect. The Union Pacific held itself out to accord transit service at Kansas City on the joint through rates, but the transit service on these shipments was completed before the grain was delivered to the Union Pacific, and there was no tariff authority for application of the joint through rate when transit was performed before such delivery.

We adhere to our previous finding, and an order dismissing the complaint will be entered.

45 I. C. C.

No. 9003.
INMAN, AKERS & INMAN
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 13, 1917. Decided June 15, 1917.

Charges on cotton in carloads from Hartwell, Ga., to Toccoa, Ga., there compressed, and reshipped to interstate destinations, found to have been unreasonable. Reparation awarded.

C. B. Howard for complainants.
No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants, Frank M. Inman, James S. Akers, Edward H. Inman, and Chessley B. Howard, were copartners, formerly engaged under the firm name of Inman, Akers & Inman in buying and selling cotton at Atlanta, Ga. By complaint, filed June 3, 1916, they allege that the charges collected by defendants on certain shipments of baled cotton shipped during the period from September 23, 1910, to November 12, 1910, inclusive, from Hartwell, Ga., to Toccoa, Ga., there compressed and reshipped to various interstate destinations during the period from November 4, 1910, to August 21, 1911, inclusive, were unreasonable to the extent that they exceeded charges that would have accrued at joint rates in effect from Hartwell to the same destinations. Reparation is asked. The claim was presented to the Commission informally September 18, 1912. Rates are stated in cents per 100 pounds.

The shipments, aggregating 379,102 pounds, moved from Hartwell to Toccoa over the Hartwell Railway to Bowersville, Ga., and the Southern Railway beyond. Charges for the inbound movement were collected in the sum of \$758.19 at a rate of 20 cents. Neither this nor any other rate applicable to cotton from Hartwell to Toccoa was on file with this Commission. However, in view of the conclusion herein reached it will not be necessary to determine what would have been a reasonable interstate rate for this transportation. The following table shows the details of the shipments from Toccoa, all of which moved over defendants' lines:

Destination.	Bales.	Weights.	Rate.	Charges paid.
		<i>Pounds.</i>	<i>Cents.</i>	
Norfolk, Va. ¹	400	183,731	52	\$955.38
Piedmont, S. C.....	100	45,504	36	163.82
Duke, N. C.....	20	9,038	43	38.86
Baltimore, Md. ¹	178	81,823	58	474.57
New York, N. Y.....	99	44,317	63	279.20
Total.....		364,413	.....	1,911.83

¹ For export. Moved on export bills of lading.

All the outbound rates charged were legally applicable except that to Baltimore. The correct rate to that point was 60 cents and there is, therefore, an outstanding undercharge of \$16.37.

For several years prior to October 21, 1909, the defendants had provided that cotton shipped from Hartwell to Toccoa for compression or concentration could be reshipped to various destinations, including those here in question, at the through rates applicable from Hartwell and the outbound weights from Toccoa. In reissuing its concentration circular, effective on the date mentioned, the Southern Railway inadvertently omitted to specify Hartwell as a point of origin from which shipments could be compressed at Toccoa and reshipped at the through rates from Hartwell. On November 21, 1910, the omission was corrected, and since that date the concentration and compression service at Toccoa has been available on shipments from Hartwell at the through rates from the latter point. The shipments moved from Hartwell during the interim.

The joint rates legally applicable from Hartwell at the time of movement were: To Norfolk, Va., for export, 52 cents; Piedmont, S. C., 38 cents; Duke, N. C., 43 cents; Baltimore, Md., for export, 60 cents; American Docks Stores, Staten Island, New York, N. Y., for export, 64 cents. Charges based on the above-named rates and the outbound weights from Toccoa would have amounted to \$1,941.75, or \$728.27 less than the total amount paid from Hartwell to the destinations named. Defendants were not represented at the hearing, but on our special docket requested authority to make the reparation asked.

The situation here presented can not be regarded in the same light as a newly established transit arrangement and does not come within our rule against awards of reparation that are tantamount to the retroactive application of such provisions.

We find that the charges assailed were unreasonable to the extent that they exceeded the charges which would have accrued at the joint rates in effect from Hartwell to the stated destinations at the time the shipments moved from Hartwell; that complainants made the shipments as described and paid and bore the charges

thereon herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that they are entitled to reparation in the sum of \$728.27, with interest. Collection of the undercharges described may be waived.

An order awarding reparation will be entered, but as the joint rates from Hartwell have been applicable to cotton compressed at Toccoa for more than two years, no order for the future is necessary.

No. 9138.

N. A. WEBSTER

v.

NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY
ET AL.

Submitted December 18, 1916. Decided June 15, 1917.

Demurrage charges at Indianapolis, Ind., on a carload of lumber from Wautubbee, Miss., not shown to have been unreasonable. Complaint dismissed.

N. A. Webster for complainant.

W. L. Yancey for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the wholesale lumber business at Texarkana, Ark. By complaint, filed August 28, 1916, he alleges that the demurrage charges collected at Indianapolis, Ind., on a carload of lumber shipped from Wautubbee, Miss., were unreasonable. Reparation is asked.

Wautubbee is a nonagency station on the New Orleans & Northeastern Railroad, 5 miles south of Enterprise, Miss. The shipment was billed from Enterprise December 16, 1914, consigned by complainant to himself at Indianapolis, where it arrived December 23, 1914. The Cleveland, Cincinnati, Chicago & St. Louis Railway, the delivering carrier, was unable to locate the consignee and on December 28, 1914, advised its connections that the shipment was unclaimed. The shipment was made for complainant by a traveling lumber inspector or buyer, and neither his nor complainant's address

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was known to the agent at Enterprise. On February 1, 1915, upon learning complainant's address, the initial carrier inquired by mail what disposition should be made of the shipment. On February 2, 1915, complainant wired that delivery should be made to the Furnas Office & Bank Fixture Company, Indianapolis, Ind., "as per instructions December 20th to agent at Enterprise, Mississippi, and delivery should be effected without demurrage charges." Receipt of the reconsigning instructions referred to in this telegram was denied by the agent at Enterprise. Delivery of the shipment to the Furnas Office & Bank Fixture Company was refused except upon payment of the accrued demurrage, which was not made until March 29, when the car was released. Demurrage charges of \$75 were assessed and ultimately borne by complainant.

Complainant asserts that the letter which he addressed to the agent at Enterprise was posted in the mail in the regular course of business, and that the original bill of lading, together with the invoice, was mailed at that time to the Furnas Office & Bank Fixture Company at Indianapolis.

An affidavit of defendants' agent at Enterprise, who billed the shipment, was admitted in evidence without objection and shows that the alleged letter of December 20 was never received by him and that a careful search through the station records failed to locate a trace of it. There is no evidence of record showing an unreasonable delay on the part of the defendants in seeking information concerning final disposition of the shipment. On the other hand, it appears that neither complainant nor the ultimate consignee made any effort to locate the shipment or to expedite its delivery.

In the absence of proof that defendants received instructions to reconsign the shipment, they can not be held responsible for failure to deliver the shipment prior to the receipt of disposition orders. Neither were they obligated to release the shipment before payment of the demurrage which had lawfully accrued. *Peller v. P. R. R. Co.*, 40 I. C. C., 84.

We find that the demurrage charges assessed are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

McCHORD, *Commissioner*, dissents
45 I. C. C.

No. 9143.
RICHARD HOPKINS
v.
OCEAN STEAMSHIP COMPANY OF SAVANNAH.

Submitted January 25, 1917. Decided July 6, 1917.

Rate of 20 cents per standard crate on onions from Savannah, Ga., to New York, N. Y., not shown to have been or to be unreasonable. Complaint dismissed.

Richard Hopkins for complainant.

R. Walton Moore and *Merrel P. Callaway* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant has a plantation near Savannah, Ga. By complaint, filed August 9, 1916, he alleges that the rate of 20 cents per crate charged by defendant on 500 crates of onions shipped May 15, 1916, from Savannah to New York, was unreasonable to the extent that it exceeded 19 cents per 100 pounds. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in cents per 100 pounds, except as otherwise noted.

The shipment consisted of onions without tops, which were dried about one week before being crated and shipped, and moved in one of defendant's steamers. Charges were collected in the sum of \$100 at an any-quantity commodity rate of 20 cents per crate, legally applicable. The distance from Savannah to New York by water is approximately 708 miles. For the purpose of comparing rates per 100 pounds and per crate the weight of a standard crate of onions has been taken as 50 pounds, although it appears that the average weight is slightly in excess thereof.

Defendant's class rates between Savannah and New York, governed by the southern classification, are the same in both directions. The southern classification rated and rates fresh or green onions without tops in crates, in carloads, sixth class, minimum 24,000 pounds; in less than carloads, fourth class. Defendant's sixth-class rate between Savannah and New York was and is 19 cents, plus a wharfage charge at Savannah of 2 cents per standard crate. Complainant contends that the rate charged, equivalent approximately to 40 cents, was and is unreasonable to the extent that it exceeded and exceeds 19 cents, minimum 24,000 pounds.

Complainant shows that defendant maintains an any-quantity commodity rate of 16 cents on onions from New York to Savannah,

which added to the wharfage charge at Savannah of 2 cents per standard crate, makes the total southbound charges 20 cents. He cited many commodities upon which defendant makes the same charge in both directions between Savannah and New York, and referred specifically to its any-quantity rates of 15 cents on bacon and salted and pickled meats, cottonseed oil in glass, and oatmeal, farina, and self-raising flour; and a carload rate of 18 cents on canned goods.

The rate assailed is also compared with a rate of 51 cents, minimum 20,000 pounds, on onions from Laredo, Tex., rail and water, by way of Galveston, Tex., to New York, 2,758 miles, and an all-water rate of 31 cents, minimum 20,000 pounds, from Galveston to New York, 2,268 miles. The latter rate is not on file with the Commission. Defendant contends that these are unduly low rates, established to permit competition with producers nearer the points of consumption. It states that the per package rates of the boat lines operating between the Atlantic ports were originally established with reference to the cubic measurement of the packages transported, and without any relation whatsoever to the rates of the rail carriers. It is stated that the per package rates are the result of competition with schooners and independent steamers plying between the ports, which forced the establishment of very low rates on commodities which were attractive to such boats. In recent years the steamship lines and the rail carriers have established joint rates, and it became necessary for the water carriers to harmonize their rates with the rates of the rail carriers, so many of defendant's per package rates were converted into rates per 100 pounds on the basis of the earnings then received from the traffic, but such changes were not made with regard to the freight classification rules generally observed by rail carriers. Defendant insists that its sixth-class rate was made with relation to the revenues it was receiving at the time on iron and steel articles, agricultural implements, burlap bags, and other comparatively low-grade articles which move in large volume southbound, and was never regarded as a proper basis for perishable commodities northbound.

Defendant shows that the rate assailed is an any-quantity rate applicable on all fresh vegetables, except asparagus; that it has been in effect without complaint for over 20 years; and that a rate of 20 cents per standard crate applies on fresh vegetables to New York from Charleston, S. C., by way of the Clyde line; from Brunswick, Ga., by way of the Mallory line; and from Savannah to Baltimore and Philadelphia, Pa., by way of the Merchants & Miners Transportation Company's boat line. The Clyde line also publishes a rate of 27 cents per standard crate from Jacksonville, Fla., to New York, and defendant has a rate of 30 cents per standard crate from Savannah

to Boston, Mass. The 16-cent commodity rate from New York to Savannah was established by defendant to encourage the south-bound movement of potatoes, turnips, onions, and other hardy winter vegetables and to enable them to compete with like vegetables moving into the south from other territories, and with southern grown vegetables. Defendant urges also that these hardy vegetables must move to the port of New York by rail, thus adding materially to the cost of marketing them in the south, and that the water rate is in the nature of a proportional rate. It is stated that hardy vegetables can be and are shipped in bags or barrels and are loaded in any part of the ship without being affected by heat, while the fresh vegetables moving north must be loaded near the ports or on the spar deck to afford ventilation.

In the following table defendant's rates on fresh vegetables in crates from Savannah to New York are compared with rates on the same commodities to the same point from Savannah and Jacksonville:

From—	Commodity rate.			
	50-pound crate.	Equal to per 100 pounds.	Sixth- class, carloads.	Fourth- class, less than carloads.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Savannah, via defendant's line.....	120	140	19	29
Savannah, all rail.....	35	70	45	68
Jacksonville, all rail.....	35	70	47	70
Jacksonville, rail and water, via Savannah.....	127	54	20	33

Any-quantity rate.

² Carload rate.

The 35-cent rate from Jacksonville to New York was prescribed by us in *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.*, 17 I. C. C., 552.

Defendant showed that invariably the commodity rates on fresh vegetables in carloads from the southeast to northeastern points are materially in excess of the class rates that would apply in the absence of commodity rates; that notwithstanding the material difference between the all-rail and all-water rates from Savannah to New York, the rail carriers have taken practically all of the traffic from the boat lines; and that in 1902, 1903, and 1904 defendant carried over 100,000 packages of fresh vegetables, while in 1915 it carried only 880 packages, which condition is explained by defendant as being due to the fact that the rail carriers provide ventilation or refrigeration, allow diversion in transit, and render more expeditious and timely service.

We find that the rate assailed is not shown to have been or to be unreasonable, and an order dismissing the complaint will be entered.

No. 9063.¹

HUDSON RIVER LUMBER COMPANY

v.

LOUISIANA & PACIFIC RAILWAY COMPANY ET AL.

Submitted December 4, 1916. Decided July 6, 1917.

Rates on yellow-pine lumber in carloads from De Ridder, La., to Oakland and Wiota, Iowa, and from Lake Charles, La., to Marne, Iowa, found to have been and to be unreasonable. Reparation awarded.

W. R. Thurmond and *Flavell Robertson* for complainants.

L. A. Bonnell for Louisiana & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in manufacturing lumber in Louisiana, with their principal offices at Kansas City, Mo. By complaints, filed July 24, 1916, they allege that the rates charged by defendants for the transportation of two carloads of yellow-pine lumber from De Ridder, La., to Oakland and Wiota, Iowa, and one carload from Lake Charles, La., to Marne, Iowa, the latter the product of logs which originated at Camp Curtis, La., shipped in February and March, 1914, were unreasonable. Reparation is asked. The claims were presented to the Commission informally within the statutory period. Rates are stated in cents per 100 pounds.

The shipments moved over the Louisiana & Pacific Railway to Fulton, La.; New Orleans, Texas & Mexico Railroad to Eunice, La.; Chicago, Rock Island & Pacific Railway to destinations. There were no joint rates applicable. Combination rates legally applicable were 35½ cents to Oakland and Marne and 37 cents to Wiota, composed of a local rate of 5 cents to Fulton under which transit was permitted at Lake Charles, and joint rates of 30½ cents thence to Oakland and Marne and 32 cents to Wiota. Charges were collected on all the shipments at the 5-cent rate to Fulton. Beyond Fulton charges were collected from complainant Hudson River Lumber Company on one carload in the sum of \$206.95, based on a weight of 67,300 pounds and the joint rate from Fulton to Oakland of 30½ cents, and on the other carload in the sum of \$181.76, based on a weight of

¹ The proceeding also embraces complaint in No. 9063 (Sub-No. 1), Calcasieu Long Leaf Lumber Company v. Louisiana & Pacific Railway Company et al.

56,800 pounds and the joint rate from Fulton to Wiota of 32 cents; and from complainant Calcasieu Long Leaf Lumber Company in the sum of \$131.36, based on a weight of 42,720 pounds and the joint rate from Fulton to Marne of 30 $\frac{1}{4}$ cents. Complainants assail the through rates, but only to the extent that the components beyond Fulton exceed 28 cents.

Prior to the time of movement a joint rate of 28 cents was in effect from Fulton to the points of destination over the route of movement, but this rate was canceled February 8, 1914. The claim agent of defendant Louisiana & Pacific Railway, called on behalf of complainants, testified that defendants intended to republish this rate so as to be effective during the period of movement, but that, due to error in transferring the rate from one tariff to another, it was omitted. On May 1, 1914, it was established over the route of movement, and remained in effect until September 16, 1914, when it was canceled. The witness also stated that the 28-cent rate had not been reestablished over the route of movement because defendants could not agree on divisions, but that the rate was now open to complainants by another route. Rates of 25 cents were cited from points of origin to Des Moines and Council Bluffs, Iowa. The points of destination are situated between Des Moines and Council Bluffs, less than 75 miles from Council Bluffs, and the witness stated that 3 cents was a reasonable additional charge from Des Moines or Council Bluffs to these points. As the rates charged represent increases subsequently to January 1, 1910, defendants were bound to justify them. Defendants have not justified them. They express willingness to make reparation on the basis of the 28-cent rate.

Upon all the facts of record we find that the rates assailed were, are, and for the future will be, unreasonable to the extent that the rates for the movement from Fulton to the points of destination in question exceeded and may exceed 28 cents per 100 pounds; that complainants made the shipments as described and paid and bore charges thereon at the rates herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued on the basis herein found reasonable; and that complainant Hudson River Lumber Company is entitled to reparation in the sum of \$41.23, with interest, and complainant Calcasieu Long Leaf Lumber Company is entitled to reparation in the sum of \$11.74, with interest.

An appropriate order will be entered.

No. 9115.¹

SALL MOUNTAIN COMPANY

v.

SOUTHERN STEAMSHIP COMPANY ET AL.

Submitted February 21, 1917. Decided June 9, 1917.

Rates on asphalt shingles in carloads and on asphalt shingles and prepared roofing in mixed carloads from points in New York, Indiana, and Illinois to various interstate destinations not shown to have been unreasonable. Complaints dismissed.

I. W. Preetorius and F. E. Spencer for Sall Mountain Company, Burmite Roofing Company, Beckman-Dawson Company, Amalgamated Roofing Company, McHenry-Millhouse Manufacturing Company, and Asphalt Ready Roofing Company.

H. J. Campbell and W. N. Webb for Heppes Company.

B. H. Dally for Vandalia Railroad Company.

A. W. Gill for Cincinnati, New Orleans & Texas Pacific Railway.

T. E. Bond for Elgin, Joliet & Eastern Railway Company.

A. P. Humburg, James Stillwell, D. P. Connell, William Burger, D. P. Williams, R. Walton Moore, and K. K. Knapp for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are dealers in asphalt and prepared roofing, with offices at New York, N. Y., South Bend, Ind., and Chicago, Ill. By complaints, filed June 24, 1916, and on subsequent dates, they allege that the rates charged by defendants on certain carloads of asphalt shingles and mixed carloads of asphalt shingles and prepared roofing, shipped from Jones Point, N. Y., South Bend and Porter, Ind., and Chicago, Argo, and Clearing, Ill., to various interstate destinations, during the period from October 2, 1912, to February 23, 1916, inclusive, were unreasonable to the extent that they exceeded the rates contemporaneously applicable from and to the same points on prepared roofing in carloads. Reparation is asked. Certain of the claims were presented to the Commission informally within two years

¹ The proceeding also embraces complaints in No. 8987, Burmite Roofing Co. v. Grand Trunk Railway Company of Canada et al.; No. 8987 (Sub-No. 1), Beckman-Dawson Co. v. Pennsylvania Company et al.; No. 8987 (Sub-No. 2), Amalgamated Roofing Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al.; No. 8987 (Sub-No. 3), McHenry-Millhouse Manufacturing Company v. Baltimore & Ohio Railroad Company et al.; No. 8987 (Sub-No. 4), Asphalt Ready Roofing Company v. New York Central Railroad Company et al.; and No. 8987 (Sub-No. 5), Heppes Company v. Wabash Railway Company et al.

after the shipments on which they are based were delivered. Some of the claims so presented were subsequently abandoned.

The rates charged on the shipments in each instance exceeded the rates contemporaneously applicable on prepared roofing from and to the respective points. The asphalt shingles and prepared roofing shipped by complainants are identical in composition and are competitive. Their value per 100 pounds is substantially the same. The shingles are generally 8 inches by 12½ inches and are shipped in cartons and bundles. They load somewhat heavier than the roofing, which is shipped in rolls wrapped with paper.

After the shipments moved the rates on asphalt shingles and mixed shipments of asphalt shingles and prepared roofing were reduced to the level of the rates on prepared roofing. As the basis sought by complainants has been established, their only interest in this case is with respect to reparation.

Defendants insist that the rates complained of were not unreasonable. They show that the reduction in question followed our decision in *Patent Vulcanite Roofing Co. v. A. & W. Ry. Co.*, 28 I. C. C., 610. In that case we found that the maintenance of rates on asphalt shingles higher than the rates contemporaneously maintained on prepared roofing was unjustly discriminatory, and the defendants therein were ordered to remove the discrimination. They complied by reducing the rates on asphalt shingles to the level of the rates on prepared roofing.

This case is substantially similar to *Beckman-Dawson Co. v. C. G. W. R. R. Co.*, 42 I. C. C., 323, wherein we found that the fact that the rates on prepared roofing from and to certain points were lower than the rates contemporaneously maintained from and to the same points on asphalt shingles and mixed shipments of asphalt shingles and prepared roofing did not establish the unreasonableness of the latter rates. Following that case and upon the facts of record, we find that the rates assailed are not shown to have been unreasonable, and an order dismissing the complaints will be entered.

No. 9123.

WATTERS-TONGE LUMBER COMPANY

v.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY ET AL.

Submitted January 15, 1917. Decided June 27, 1917.

Following the principle applied in *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114; 33 I. C. C., 164; *Held*, That defendants should permit the reconsignment of carload shipments of lumber in transit from Demopolis, Ala., to Martinsburg, W. Va., at Lexington, Ky., on basis of the through rate from Demopolis to Martinsburg, plus a maximum charge of \$5 for the extra services incident to the reconsignment. Reparation awarded.

A. J. Ribe and W. B. Thompson for complainant.

F. D. Claggett for Cincinnati, New Orleans & Texas Pacific Railway Company, and Alabama Great Southern Railroad Company.

J. W. Hunter, for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business at Birmingham, Ala. By complaint, filed August 14, 1916, as amended, it alleges that unreasonable charges were collected by defendants for the transportation of a carload of lumber from Demopolis, Ala., to Mount Sterling, Ky., diverted to Lexington, Ky., and from there reconsigned to Martinsburg, W. Va. Reparation is asked and the establishment of reasonable and nondiscriminatory rules for the future. Rates are stated in cents per 100 pounds.

The shipment, consisting of 59,000 pounds of yellow-pine lumber, was delivered to the Southern Railway at Demopolis, October 8, 1915, by complainant consigned to itself at Mount Sterling. The purchaser for whom the shipment was originally intended canceled its order, whereupon complainant requested the Southern to divert the shipment to Lexington. The diversion was effected at Birmingham by the Alabama Great Southern Railroad under a tariff provision which provided for free reconsignment and diversion, and the car moved over that line to Chattanooga, Tenn., and over the Cincinnati, New Orleans & Texas Pacific Railway, hereinafter called the Queen & Crescent, to Lexington, where it arrived October 17. On October 18 the agent of the Queen & Crescent at Lexington was instructed

by the complainant to forward the car to Martinsburg. Accordingly, on October 19, the car moved over the Queen & Crescent to Cincinnati, Ohio, thence to destination over the Baltimore & Ohio Southwestern and Baltimore & Ohio railroads. The contents of the car remained unchanged and no out of line haul was made. Charges in the sum of \$243.74 were paid by the consignee and later undercharges in the sum of \$1.71 were paid by the complainant, the total charges being based on a combination rate of 21 cents to Lexington and 20.6 cents beyond. The shipment was sold f. o. b. destination and the freight charges paid by consignee were deducted from the invoice price in settlement. At the time of shipment a joint through rate of 28 cents was maintained over the route of movement from Demopolis to Martinsburg. This rate, which is still in effect, was not applicable to the shipment in issue for the reason that the tariffs of the Queen & Crescent made no provision for reconsignment at Lexington.

In *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114, and 33 I. C. C., 164, and other cases, we held, under similar circumstances that it was unreasonable for carriers not to provide for reconsignment at the through rate plus a reasonable charge for the additional service incident to the reconsignment. Following those cases we find upon the facts disclosed that the defendants' tariff rules were unreasonable in that they did not provide for the reconsignment where the contents of the car remain unchanged, where no out of line haul is necessitated by the reconsignment, and when request therefor is received before the arrival of the car at Lexington or within a reasonable time thereafter, on the basis of the joint through rate contemporaneously in effect from the point of origin to the new destination with an additional maximum charge of \$5 for the services rendered in effecting the reconsignment, which rule and charge we find would have been, and for the future will be, just and reasonable; that complainant made the shipment as described and paid and bore the charges thereon; that such charges were unreasonable, and that complainant was damaged to the extent of the difference between the charges paid and the charges that would have accrued on the basis of the joint rate of 28 cents per 100 pounds, plus the maximum charge of \$5 herein found reasonable; and that complainant is entitled to reparation in the sum of \$75.24, with interest.

An appropriate order will be entered.

No. 9145.

PROCTER & GAMBLE MANUFACTURING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted January 8, 1917. Decided June 15, 1917.

Following *Swift & Co. v. A. C. R. R. Co.*, 42 I. C. C., 294, defendants' rules governing the refining in transit at Kansas City, Kans., of cottonseed oil shipped from points in Oklahoma not shown to have been unreasonable or to have resulted in unreasonable charges for the transportation of soap stock from Kansas City to Chicago, Ill., St. Louis, Mo., and St. Bernard, Ohio. Complaint dismissed.

William H. McGuffey for complainant.

H. F. Canavan for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation, with its principal office at Cincinnati, Ohio, and a cottonseed oil refinery at Kansas City, Kans. By complaint, filed August 10, 1916, it alleges that the charges collected by defendants on numerous carloads of crude cottonseed oil, shipped during the period from October 16, 1913, to March 30, 1914, inclusive, from points in Oklahoma, to Kansas City, there refined, and soap stock, a by-product thereof, shipped during the period from March 10, 1914, to April 25, 1914, inclusive, to Chicago, Ill., St. Louis, Mo., and St. Bernard, Ohio, were unreasonable because of defendants' tariff rule which limited the amount of soap stock which could be shipped from refining points at transit rates to 8 per cent of the weight of the inbound crude oil. Reparation is asked. The claim was presented to the Commission informally March 10, 1916.

The soap stock shipped from Kansas City exceeded 8 per cent of the weight of the inbound crude oil, and the shipments under consideration represent the excess. Had the restriction not been in effect, this soap stock could have moved from Kansas City to destinations at the balances of the joint rates from points of origin instead of at the local rates from Kansas City, which were charged. Complainant contends that the limitation of the amount of the outbound product which could be shipped at transit rates was unreasonable, and asks reparation down to the basis of the joint rates.

The rule above referred to was in effect from December 11, 1911, to June 11, 1914. Prior and subsequently to that period there was and

has been no restriction on outbound shipments of the products of the refining of crude cottonseed oil at transit rates. Complainant's only interest is with respect to reparation.

This case is concluded by *Swift & Co. v. A. C. R. R. Co.*, 42 I. C. C., 294. Following that case, and upon the record herein, we find that neither the rule assailed nor the charges collected on the shipments have been shown to be unreasonable.

An order dismissing the complaint will be entered.



No. 9187.

GAMBLE-ROBINSON FRUIT COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted February 16, 1917. Decided June 25, 1917.

1. Rate of \$1.15 per 100 pounds on lemons in carloads from Tustin, Santa Barbara, Whittier, and Santa Paula, Cal., to Miles City, Mont., found to have been and to be unreasonable and rate of \$1 per 100 pounds prescribed as a reasonable maximum rate for the future.
2. Reparation awarded on two carloads of lemons from Santa Paula to Miles City.
3. Claim for reparation on certain shipments found to have been abandoned.

Lorenzo A. Knudsen for complainant.

T. W. Proctor for Chicago, Milwaukee & St. Paul Railway Company.

O. A. David for Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale fruit and produce business, with its principal office at Miles City, Mont. By complaint, filed August 30, 1916, it alleges that defendants' rate of \$1.15 per 100 pounds on lemons, in carloads, from Tustin, Santa Barbara, Whittier, and Santa Paula, Cal., to Miles City, was and is unreasonable and unjustly discriminatory to the extent that it exceeds \$1 per 100 pounds. Reparation is asked on five shipments which were forwarded between April, 1913, and June, 1915, inclusive. Rates are stated in amounts per 100 pounds.

A claim covering two of the shipments delivered at Miles City, May 6, 1913, and July 1, 1913, respectively, was presented to the Commission informally January 27, 1915, and a claim covering a third shipment, delivered April 16, 1914, was filed with the Commission February 21, 1916. Complainant asked that the latter claim be considered with the claim filed January 27, 1915. On February 29, 1916, complainant was advised that the claim could not be adjusted informally. The formal complaint was not filed within two years after the causes of action accrued, nor within six months after notice that the claim could not be adjusted informally. The claim for reparation on these three shipments must, therefore, be considered to have been abandoned. *Rule III of the Rules of Practice; Newport Mining Co. v. C. & N. W. Ry. Co.*, 41 I. C. C., 465.

The two shipments remaining for consideration originated at Santa Paula and were forwarded May 1, 1915, and June 21, 1915, respectively. One was originally consigned to the California Fruit Growers' Exchange at Salt Lake City, Utah, but under appropriate tariff provision was diverted in transit to Butte, Mont., and rediverted to Miles City at the through rate to final destination. It moved over the lines of the Southern Pacific Company in connection with the San Pedro, Los Angeles & Salt Lake Railroad, now the Los Angeles & Salt Lake Railroad, to Salt Lake City; Oregon Short Line Railroad to Butte; Chicago, Milwaukee & St. Paul Railway to destination. The other was consigned to the California Fruit Growers' Exchange at Miles City and moved over the lines of the Southern Pacific to Ogden, Utah; Oregon Short Line to Butte; Chicago, Milwaukee & St. Paul to destination. Each of these shipments weighed 33,264 pounds, and charges were collected on each in the sum of \$382.54, at the joint carload rate of \$1.15, legally applicable. Before the shipments arrived at Miles City they were sold to complainant. While complainant was not shown in the transportation records as either consignor or consignee it was in fact the true consignee of the shipments and paid in the first instance and ultimately bore the total freight charges. The case, therefore, does not come within the rule which prohibits an award of reparation to a stranger to the transportation record.

Complainant contends that the rate of \$1.15 which applied and applies to Miles City over defendants' lines from all the points of origin named in the complaint was and is unreasonable to the extent that it exceeded and exceeds \$1. This contention is supported by our decisions in *Arlington Heights Fruit Exchange v. S. P. Co.*, 19 I. C. C., 148; 22 I. C. C., 149; *In re Transportation of Lemons*, 23 I. C. C., 27. In those cases we considered at length the reasonableness of the rate on lemons in carloads from southern California point

to the east and prescribed for the future a blanket rate of \$1 as a reasonable maximum rate to points east of the Rocky Mountains to the Atlantic seaboard, except in the southeast, as designated in the tariff of the transcontinental freight bureau, and to certain points in Montana, Wyoming, and adjacent states. This rate now applies in connection with defendants' lines from California points, including those here in question, to various jobbing points in Montana other than Miles City. While the rate to Miles City was not specifically in issue in either of the cases cited, there is nothing in the present record warranting a different conclusion with respect to the rate to that point. No evidence was offered by defendants other than a mere reference to the division of the rate accruing to the Chicago, Milwaukee & St. Paul. The allegation of unjust discrimination has not been sustained.

We find that the rate assailed was, is, and for the future will be, unreasonable to the extent that it exceeded and may exceed \$1 per 100 pounds; that the two shipments from Santa Paula were made as described; that complainant paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$49.90, with interest, from all of the defendants, and in the additional sum of \$49.90, with interest, from all of the defendants except the Los Angeles & Salt Lake Railroad Company.

An appropriate order will be entered.

45 I. C. C.

No. 9154.

HARMON & EVANS

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted February 4, 1917. Decided June 15, 1917.

Refrigeration and re-icing charges on a carload of peaches from Mountainburg, Ark., to St. Louis, Mo., reconsigned to Detroit, Mich., not shown to have been unreasonable or illegal. Complaint dismissed.

C. H. Rodehaver for complainant.

Thomas Bond for St. Louis & San Francisco Railroad Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in fruit and vegetables, with its principal office at St. Louis, Mo. By complaint, filed April 7, 1916, it alleges that the refrigeration and re-icing charges collected by defendants on a carload of peaches shipped August 6, 1915, from Mountainburg, Ark., to St. Louis, reconsigned to Detroit, Mich., were unreasonable and illegal to the extent of \$14.70 charged for re-icing at East St. Louis, Ill. Reparation is asked.

The shipment was consigned to complainant at St. Louis and moved over the St. Louis & San Francisco Railroad, hereinafter called the Frisco, arriving at St. Louis on August 7, 1915. On August 9 the Frisco received an order from complainant to re-consign the shipment to Detroit, and, accordingly, delivered it to the Terminal Railroad Association of St. Louis, hereinafter called the Terminal Railroad, at Tower Grove, which is within the St. Louis switching limits, to be switched to the Wabash Railroad, with instructions to re-ice and bill the charges forward. The shipment was re-iced by the Terminal Railroad at East St. Louis, and was there delivered to the Wabash, which carried it to destination. Refrigeration charges were collected in the sum of \$70.61, composed of \$55.91 based on a weight of 20,332 pounds and the legally applicable through refrigeration rate of 27½ cents per 100 pounds, and \$14.70 for re-icing at East St. Louis.

The applicable tariff provided as follows:

RE-ICING AT INTERMEDIATE STOP POINTS; AT RECONSIGNING POINTS; * * *:

(a) Inspection of bunkers and re-icing.

While cars are at any intermediate point, as provided in paragraph (c), * * * carriers will examine bunkers daily, and when such cars require additional ice, they shall be re-iced to capacity.

When cars are forwarded from intermediate points, as provided in paragraph (c), bunkers shall be re-iced to capacity before forwarding.

(b) Nonacceptance of instructions to re-ice.

No instructions will be accepted from shippers, owners, or consignees for the re-icing at intermediate points * * * of shipments subject to this tariff.

(c) Charges for re-icing at intermediate stop or reconsigning points.

The charge for all ice supplied at any intermediate point between point of origin and final destination to cars which have been stopped or held on orders of or for reconsignment instructions from shipper or consignee, or for partial unloading, shall be added to waybill for collection at final destination.

It is complainant's contention that the provisions quoted provide a charge for re-icing, in addition to the through refrigeration charge, only when shipments are re-iced at points at which stopped or held for reconsignment upon shippers' or consignee's orders; that this shipment was held at St. Louis for reconsignment; that the ice was placed in the car at East St. Louis, a point at which the shipment was not held on complainant's orders; that after leaving St. Louis the shipment was in transit to Detroit, and therefore that the re-icing at East St. Louis was properly included in the through refrigeration charge, and the additional charge for such re-icing was made without tariff authority.

We are of the opinion, and so find, that complainant's contention is not well founded, and that the tariff rule under consideration authorized the assessment of an additional charge for re-icing at East St. Louis. Upon this record we are unable to verify the correctness of the amount of the re-icing charge. Subsequently to the movement the tariff was amended so as to provide for the application of the provisions quoted to shipments re-iced at any point within the St. Louis-East St. Louis switching limits, as specifically defined.

The charges assailed are not shown to have been unreasonable or illegal and the complaint must therefore be dismissed.

An appropriate order will be entered.

No. 8773.

E. H. STANTON COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted September 28, 1916. Decided June 15, 1917.

Rate on inedible tallow and grease in carloads from Spokane, Wash., to Chicago, Ill., not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

Emil N. Odell for complainant.

J. W. Quick and *S. J. Henry* for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the meat-packing business at Spokane, Wash. By complaint, filed March 13, 1916, it alleges that the rate of \$1.06½ per 100 pounds charged by defendants for the transportation of five carloads of inedible tallow and grease from Spokane to Chicago, Ill., during the period from July 8, 1914, to April 12, 1915, inclusive, was unreasonable and unjustly discriminatory to the extent that it exceeded rates of 60 cents per 100 pounds contemporaneously in effect from Seattle and Tacoma, Wash., Portland, Oreg., and other Pacific coast points from which Spokane is intermediate to Chicago. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipments aggregated 334,974 pounds and moved over defendants' lines. Charges were collected thereon in the sum of \$3,567.46 at the joint rate of \$1.06½. A joint carload rate of 60 cents contemporaneously applied on inedible tallow and grease from Seattle, Tacoma, Portland, and other Pacific coast points to Chicago and Chicago rate points by way of defendants' lines through Spokane. This rate has since been increased to \$1. On October 4, 1915, a rate of 60 cents was established from Spokane to Chicago and Chicago rate points, but on May 1, 1917, this rate was increased to \$1. The present rate conforms to the requirements of the fourth section. The former departure from the rule of the fourth section was protected by an appropriate application.

In support of its contention that the rate charged was unreasonable, complainant relies mainly upon the facts that it exceeded the rate from the more distant points, and that the 60-cent rate was subse-

quently established from Spokane. But departure from the long-and-short-haul rule of the fourth section does not of itself prove that the rate from the intermediate point was unreasonable, and the subsequent reduction of the rate is also insufficient. No damage is shown to have resulted to complainant on account of the lower rate maintained from the more distant points.

An order dismissing the complaint will be entered.

No. 8760.

SUNDERLAND BROTHERS COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted September 27, 1916. Decided July 6, 1917.

Rates on common building brick in carloads from Brazil, Ind., to Monteith, Iowa, and York, Nebr., not shown to have been or to be unreasonable or unduly prejudicial. Shipments found to have been overcharged and reparation awarded.

H. S. Colvin for complainant.

C. D. Sudborough for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in building materials at Omaha, Nebr. By complaint, filed March 29, 1916, it alleges that the rates applicable on two carloads of common building brick shipped from Brazil, Ind., to York, Nebr., and Monteith, Iowa, on April 1 and June 25, 1914, respectively, were unreasonable and unjustly discriminatory. It asks reparation on the shipment to Monteith and for authorization not to pay certain outstanding undercharges on the shipment to York. Rates are stated in amounts per net ton.

The shipment to Monteith weighed 41,490 pounds; that to York 50,640 pounds. Both moved as routed by the shipper to Peoria, Ill., through Decatur, Ill., by way of the Vandalia Railroad. From Peoria the shipment to Monteith moved by way of the Chicago, Rock Island & Pacific Railway; that to York by way of the Chicago & North Western Railway. Over the routes of movement the distance from Brazil to Monteith is 501 miles and to York 749

miles. No joint through rates were in effect and charges were collected to Monteith in the sum of \$71.25 and to York in the sum of \$98.75. The rates applicable were combination rates of \$2.65 and \$4.05, respectively, minimum 50,000 pounds, composed of a rate of 75 cents from Brazil to Decatur and rates of \$1.90 and \$3.30 from Decatur to Monteith and York, respectively. The shipment to Monteith was overcharged \$5 and that to York was undercharged \$3.80. After the shipments moved the 75-cent Brazil-Decatur component was increased to 79 cents following *The Five Per Cent Case*, 31 I. C. C., 351, and 32 I. C. C., 325. The rates applicable from Brazil to Monteith and York yielded per ton mile earnings of 5.28 mills and 5.4 mills, respectively; the present rates yield 5.36 mills and 5.46 mills per ton-mile, respectively.

When the shipments moved a proportional rate of 60 cents applied from Brazil to Rowell, Ill., a local station on the Vandalia between Decatur and Peoria, on common building brick, in carloads, destined to points named in certain specified tariffs which embraced in general Missouri River common points and points in Kansas and Nebraska on the Chicago, Rock Island & Pacific, the Missouri Pacific, and the St. Joseph & Grand Island railways and the Union Pacific Railroad. This proportional rate was subsequently increased to 65 cents. Neither Monteith nor York were or are named as destinations in the tariffs specified. The rate from Rowell to Monteith was \$1.90 and to York \$3.30. Complainant contends that by reason of such restriction in the application of the proportional rate to Rowell, the rates from Brazil to Monteith and York were and are unreasonable and unjustly discriminatory.

Complainant offered no evidence with reference to any particular destination which has or might have any undue advantage under the present adjustment with resultant undue prejudice to complainant or to consignees at Monteith or York.

Traffic originating on the Vandalia at Brazil destined to points west of the Mississippi River may be routed over the lines of the carrier named either through Peoria or East St. Louis, Ill. The rates on brick, in carloads, from Rowell to destinations named in the tariffs specified in the clause restricting the application of the Rowell proportional rate are generally 40 cents per ton higher than the corresponding rates from East St. Louis. Defendants show that the proportional rate to Rowell was made 40 cents less than the rate applicable on brick from Brazil to East St. Louis in order to equalize the through rates from Brazil to Missouri River points and points west of the Missouri River by way of Peoria with the through rates made by combination on East St. Louis to the same destinations, thereby making available routes through Peoria in conjunction with connect-

45 I. C. C.

tions of the Vandalia which do not reach East St. Louis. As illustrative of the situation, the defendants refer to the rates on brick from Brazil to Kansas City, Mo. The local rate from Brazil to East St. Louis is \$1.05 and the proportional rate to Rowell 65 cents; the local rates from East St. Louis and Rowell to Kansas City are \$1.50 and \$1.90, respectively, making the combination rate from Brazil to Kansas City \$2.55 through either gateway. Defendants also stated that the proportional rate to Rowell is not made applicable on traffic to Monteith and points in Iowa other than Missouri River common points, because the through rates from Brazil to those destinations based on Decatur and Peoria are generally lower than the through rates based on East St. Louis to the same destinations. The through rates on brick from Brazil to Monteith based on East St. Louis, Decatur, and Peoria were \$3.30, \$2.65, and \$2.85, respectively, and now are \$3.35, \$2.69, and \$2.90, respectively. The rate from Brazil to York based on East St. Louis at the time the shipment moved was \$3.90, but the existence of a rate by way of a competing route lower than the rate applicable over the route of movement is not sufficient to establish the unreasonableness of the higher rate.

We find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial, but that the charges collected on the shipment from Brazil to Monteith were illegal to the extent that they exceeded the charges that would have accrued at the rate of \$2.65 per net ton subject to a minimum weight of 50,000 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued on the basis of the rate and minimum weight legally applicable; and that it is entitled to reparation in the sum of \$5, with interest, from the Vandalia Railroad Company, and the Chicago, Rock Island & Pacific Railway Company and Jacob M. Dickinson, its receiver.

An appropriate order will be entered.

No. 9002.

N. W. WOOD & SON

v.

ERIE RAILROAD COMPANY ET AL.

Submitted January 15, 1917. Decided July 6, 1917.

Rates on anthracite coal in carloads from Plains Junction, Pittston, Avoca, Dunmore, Scranton, and Honesdale, Pa., to complainants' coal yard at Middletown, N. Y., not shown to have been or to be unreasonable or unduly prejudicial. Complaint dismissed.

Russell Wiggins for complainants.

H. A. Taylor for Erie Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Robertson G. Wood and Frances A. Wood, co-partners, engaged in the coal business at Middletown, N. Y., under the firm name of N. W. Wood & Son. By complaint, filed June 30, 1916, they allege that the rates charged by defendants for the transportation of anthracite coal in carloads from Plains Junction, Pittston, Avoca, Dunmore, Scranton, and Honesdale, Pa., to complainants' coal yard at Middletown were and are unreasonable and unjustly discriminatory. Reparation is asked on shipments made subsequently to May 1, 1916, and the establishment of reasonable rates for the future. Rates are stated in amounts per long ton.

The points of origin are coal assembling stations in the anthracite coal fields of Pennsylvania and are situated on the Wyoming division of the Erie Railroad. Middletown is on the main line of the same railroad, 68 miles west of New York, N. Y., and is also served by the New York, Ontario & Western Railway, hereinafter called the Ontario & Western, and the Middletown & Unionville Railroad. Complainants' coal yard is located on the Middletown & Unionville, about three-fourths of a mile from the latter's junction with the Erie, while all other and competing coal yards in Middletown are located on the Erie or the Ontario & Western, the latter not a party to this proceeding. The Erie assumed the burden of defense and will be referred to as defendant.

For some time prior to May 1, 1916, defendant's rates on anthracite coal in carloads from the points of origin to Middletown were \$1.60 on prepared sizes, \$1.45 on pea size, and \$1.35 on sizes smaller

than pea. On May 1, 1916, these rates were reduced to \$1.15 on prepared sizes and \$1.05 on pea and smaller sizes, in compliance with our supplemental order in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220. Contemporaneously with this reduction defendant discontinued the absorption of the Middletown & Unionville's switching charge of 20 cents, which it had theretofore absorbed, and complainants have since paid the Middletown rate, plus 20 cents for yard delivery. Defendant's rates apply to all switches and yards of complainants' competitors located adjacent to its rails in Middletown.

Complainants buy about 3,500 tons of coal per annum, f. o. b. defendant's rails at Middletown, and compete with dealers located on defendant's line and on the Ontario & Western. The coal rates of the latter from the anthracite mines on its line in Pennsylvania to Middletown are 10 cents higher than defendant's, but this difference is equalized in the purchase price of the coal. Neither line absorbs the switching charge of the other or of the Middletown & Unionville.

Complainants show that defendant absorbs switching charges of 30 cents on coal for delivery on its connections at Newburgh, N. Y., and Weehawken, N. J., and at Wellsville and Attica, points in western New York. The rates from the points of origin to Newburgh and Weehawken are \$1.45 on prepared sizes and \$1.35 on pea and smaller sizes, and, after absorbing the switching charges at those points, defendant's earnings equal those yielded by the Middletown rates. The rates from the same points to Attica are \$1.85 on prepared sizes and \$1.62 on pea and smaller sizes, and to Wellsville \$2 on prepared sizes and \$1.75 on pea and smaller sizes. Switching charges were absorbed at these points prior to our order in *Rates for Transportation of Anthracite Coal*, *supra*, and for defendant it was testified that, since the absorption of the switching charges did not reduce its earnings at those points below \$1.15 on prepared sizes, it continued to absorb those charges. The order in the case cited required defendant to reduce the rates on coal from its mines in the anthracite coal fields to practically all points on its line east of Attica, and defendant ceased to absorb switching charges of connections at Port Jervis, Binghamton, Corning, Canisteo, Hornell, and Bath, N. Y., at the same time it discontinued the absorption at Middletown.

There is no evidence that complainants compete with coal dealers located on defendant's connections at Newburgh, Wellsville, Attica, or Weehawken, or that otherwise they are unduly prejudiced by the fact that defendant absorbs switching charges at those points; but they insist that defendant should be required to absorb the switching charge of the Middletown & Unionville in order to put them upon

a rate parity with their competitors located upon the tracks of defendant and of the Ontario & Western at Middletown.

A trunk line can not be compelled to absorb the switching charges of a connecting line in the absence of unjust discrimination or undue prejudice. In *Manufacturers Railway Co. v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93, 103, the Commission said:

In the absence of an undue discrimination with respect to such absorptions the Commission could make no lawful order that they be made, and its order even in case of such discrimination would probably be in the alternative to absorb the charge of the railway or to cease absorbing similar terminal charges under like conditions. If there is shown no such discrimination, the only question left for the Commission to consider is the establishment of a joint rate between the railway and the trunk lines, and, assuming the rate of the latter to be reasonable in itself, such joint rate must necessarily be higher than that rate by the amount of the through charge accruing to the railway.

No absorptions of switching charges are made by defendant at Middletown, and it asserts that when its rates were reduced, following *Rates for Transportation of Anthracite Coal, supra*, it discontinued absorption of switching charges of connecting carriers at all points where its net returns would otherwise fall below the level prescribed by us. No evidence was adduced to show that defendant's own rates were or are in themselves, or that the switching charge of the Middletown & Unionville was or is in itself, unreasonable.

We find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial, and an order dismissing the complaint will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 945.
SPECIAL PASSENGER EQUIPMENT.

Submitted January 27, 1917. Decided June 15, 1917.

Respondents' proposed withdrawal of concurrences from tariffs publishing rates, rules, and regulations governing the transportation of special baggage and passenger cars found not justified, and schedules under suspension required to be canceled.

R. Walton Moore and Willis H. Fowle for respondents.

W. I. Swain for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By supplements to Joseph Richardson's joint passenger tariff I. C. C. No. F-3036, filed to take effect October 10, 1916, and October 20, 1916, respectively, respondents, Mobile & Ohio Railroad Company and Southern Railway Company in Mississippi, proposed to withdraw their concurrences from tariffs publishing rates, rules, and regulations for the transportation of special baggage cars and special passenger cars between points south of the Ohio and Potomac and east of the Mississippi rivers, and between certain adjacent points on the lines of carriers operating in the territory described. Only the respondents propose to withdraw from participation in the above-named tariff, without providing any rates, rules, or regulations whatsoever for the transportation of special passenger or baggage cars over their lines. Upon protest filed by the Car Owning Managers' Association of St. Louis, Mo., the schedules were suspended until August 7, 1917.

The exclusive use of special passenger or baggage cars in this territory is principally availed of by dramatic, minstrel, or chautauqua companies. Protestant's association represents about 16,000 amusement managers, who, it is claimed, have invested about \$1,000,000,000 in show property, including private cars. These privately owned cars frequently are used instead of respondents' cars and generally one passenger car and one baggage car are required for each movement. The present rates for the transportation of these cars apply to those furnished either by the carriers or by others.

Respondents state that the handling of special passenger and baggage cars at the present rates is unprofitable; that that class of traffic is not bearing its share of the operating expenses; that the estimated

cost of operating their passenger trains containing five cars is \$1.20 per mile, or 24 cents per car-mile; that their earnings for the year 1915 were about 90 cents per passenger-train mile; that their gross passenger earnings for the fiscal year 1915 were approximately \$30,000 less than they were for the same period 15 years ago; and that their passenger service has shown a net loss for several years. The manner of arriving at these figures is not disclosed. There is no showing that any part of this alleged loss was definitely attributable to the class of service in question. No substantial evidence was introduced to show the cost of handling these special cars, nor were the average hauls or earnings disclosed. Respondents further state that they are frequently required to furnish special passenger cars in instances where it is necessary to haul the empty cars great distances for loaded hauls of relatively short distances, and that the expense of the empty movement frequently approaches closely the passenger revenue.

Respondents contend that in certain instances individuals and small parties under separate management consolidate for the sole purpose of securing party rates and the use of special baggage cars for the transportation in passenger service of their baggage or paraphernalia, which consists of tent poles, merry-go-rounds, gasoline engines, trunks, and boxes containing novelties to be offered for sale and various other articles which should properly be classed and handled as freight. Also that the transportation of these special cars subjects respondents to fire and personal injury hazards, in that the cars are frequently used as living quarters and carry cook stoves; and there is a risk of personal injury to the parties occupying the cars and a danger of fire being started by sparks from the stove or from the careless use of torches, especially during the season when cotton is stored on station platforms. Respondents' witness, however, was unable to state that damage claims of any consequence had ever been filed or paid as a result of handling special cars.

It is further contended that we are without power to prevent the respondents' withdrawal from participation in rates for the transportation of special passenger and baggage cars which are below the normal level. It is their desire, however, to continue to furnish and transport, upon reasonable request therefor, special or private passenger and baggage cars, but under special contracts, such as are now filed with the Commission with respect to the transportation of circuses. Respondents say that if permitted to withdraw from the present rates on special passenger and special baggage cars, and, if necessary, to file tariffs, they are willing to publish a rate of 30 cents per car-mile, with a minimum charge of \$25 for each movement, such charge to be separate from and in addition to the regularly estab-

lished passenger fares contemporaneously in effect. The question of the reasonableness of these suggested rates is not before us.

Protestant's members have provided themselves with private passenger cars at an expense estimated at \$10,000,000, so that they may control the necessary equipment upon which they can depend. A delay in furnishing equipment would compel the cancellation of important engagements and generally demoralize their enterprises. Considerable argument is directed to the advantages of the use of protestant's private cars both to the amusement companies and to respondents, but that question is not in issue in this proceeding. As stated, the proposal of respondents is, by the suspended schedules, to withdraw their participation in published rates and rules governing this class of transportation. This omission, which would result in the disruption of a traffic which is widespread and of long continuance, can not be accepted as reasonable; and if the traffic is not reasonably remunerative, carriers should, upon a proper showing, propose a reasonable substitute schedule.

Protestant observes that respondents do not pay anything for the use of the private cars or bear any expense of their upkeep, whereas respondents pay the Pullman Company from 1 to 2 cents per mile for the use of Pullman cars; keep the running gears thereof in repair; haul the cars to and from the repair shops free; and grant one or more employees of that company free transportation. Protestant contends that this constitutes unjust discrimination; that the proposed cancellations would render the discrimination more intense; and that, as a matter of fact, respondents should reimburse protestant for the use of the privately owned equipment. Also that the proposed withdrawal would exclude traveling amusement companies from operating at points on respondents' lines.

We find that respondents have not justified their proposed withdrawal from participation in the present rates, rules, and regulations, and an order will be entered requiring the cancellation of the schedules under suspension.

No. 8646.

GARLAND NUT & RIVET COMPANY

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY ET AL.

Submitted July 14, 1916. Decided July 7, 1917.

Minimum weight of 80,000 pounds applicable on rivets from Pittsburgh, Pa., to Seattle, Wash., justified. Complaint dismissed.

P. D. Siverd for complainant.

John T. Bowe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the manufacture of rivets at Pittsburgh, Pa. By complaint, filed February 1, 1916, it alleges that the minimum carload weight of 80,000 pounds applied by defendants on rivets less than one-half inch in diameter from Pittsburgh, to Seattle, Wash., is unreasonable and unduly prejudicial. The establishment of a 40,000-pound minimum is asked.

Prior to July 15, 1915, the minimum on rivets, bolts, nuts, washers, nutlocks, lag bolts, and lag screws, in straight or mixed carloads, from Pittsburgh to Seattle was 40,000 pounds, but on that date it was increased to 80,000 pounds, following *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, 641. At the same time the carload rate was reduced from 80 cents per 100 pounds to 75 cents. On April 10, 1916, this rate was further reduced to 65 cents, and on December 30, 1916, it was increased to 75 cents, the present rate.

Complainant admits that 80,000 pounds of its rivets can be loaded conveniently in a standard car and that it is physically possible to load a considerably greater weight of rivets in such a car. The establishment of the lower minimum is sought solely because of the inability of certain of its customers to handle 80,000 pounds of rivets at one time. The allegation of undue prejudice rests upon the contention that competitors who maintain warehouses in the Pacific coast territory are able to avail themselves of the 80,000-pound minimum to complainant's disadvantage.

Defendants state that this was the only complaint that had been made with respect to the 80,000-pound minimum and that an investigation among dealers in various cities in the states of Washington

and Oregon discloses satisfaction with the present minimum in connection with the carload mixture permitted. They contend that complainant's desire for the reduction of the minimum grows out of purely commercial and not transportation conditions and urge that a carload minimum which insures reasonably complete loading of carriers' equipment; that applies in connection with a comparatively low rate; and that, judging from the absence of complaint, is satisfactory to shippers generally, should not be lowered to meet the needs or desires of one shipper.

We find that defendants have justified the minimum weight assailed. An order dismissing the complaint will be entered.

No. 8702.

POWELL-MYERS LUMBER COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted July 10, 1916. Decided July 5, 1917.

Complainant found to have been damaged in connection with the transportation of a shipment of oak lumber from Moark, Ark., to Dupo, Ill., reconsigned to Danville, Ill., because of the unlawful refusal of the initial carrier to receive the shipment for transportation to Cypress, Ill., the destination point originally specified by the shipper. Reparation awarded.

H. J. Aldworth for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business at South Bend, Ind. By complaint, filed March 4, 1916, it alleges that the charges collected on a carload of lumber shipped July 29, 1914, from Moark, Ark., to Dupo, Ill., and reconsigned to Danville, Ill., were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment consisted of oak lumber sold by complainant to the Chicago & Eastern Illinois Railroad f. o. b. its rails at Thebes, Ill. In order to conceal the identity of its customer, complainant directed

the shipper at Moark to tender the shipment to the St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain, consigned to complainant at Cypress, Ill., a local point on the Chicago & Eastern Illinois, 33 miles northeast of Thebes. Prior to the time the shipment moved the Iron Mountain had issued a circular to its agents which it termed an "embargo" against consigning lumber, originating on its lines, to Cypress, except material for the use of the Chicago & Eastern Illinois. Not knowing that the lumber in question was for the Chicago & Eastern Illinois, the agent at Moark, in compliance with the circular referred to, refused to issue a bill of lading showing Cypress as its destination point. In order to avoid delay and demurrage, the shipper accepted a bill of lading showing the destination as Dupo, which is the Iron Mountain's yard station at East St. Louis, Ill. While the shipment was in transit the complainant further endeavored to have it delivered to the Chicago & Eastern Illinois at Thebes, but unavailingly. It moved over the Iron Mountain through Thebes to East St. Louis, from which point complainant reconsigned it to the Chicago & Eastern Illinois at Danville, and it was moved to that point by the latter carrier. The lumber weighed 55,900 pounds and the charges up to East St. Louis in the sum of \$72.67, based on a rate of 13 cents, were paid by the Chicago & Eastern Illinois. That amount, together with a \$3 charge which apparently was assessed for switching the shipment from the rails of the Iron Mountain to the Chicago & Eastern Illinois, was deducted from complainant's invoice.

At the time the shipment moved a combination rate of 15 cents applied on lumber from Moark to Cypress, composed of a rate of 10 cents by way of the Iron Mountain to Thebes, and a rate of 5 cents by way of the Chicago & Eastern Illinois beyond. Complainant contends that had the shipment been forwarded in accordance with the shipper's original directions it would only have had to pay charges in the sum of \$55.90, based on a rate of 10 cents from Moark to Thebes, at which point delivery would have been made to the Chicago & Eastern Illinois, and that, as a result of the Iron Mountain's refusal to forward the shipment as requested, complainant was damaged to the extent of the difference between that amount and the amount it was compelled to pay, or \$19.77. No appearance was entered by the defendants.

Complainant asserts that the reason for the Iron Mountain's embargo against consignments of lumber to Cypress was a desire to insure a longer haul for itself on lumber destined to points in central freight association, trunk line, and northwestern territories.

An embargo on traffic is an emergency measure adopted where it is physically impossible for carriers to transport freight, or where

there is an unusual accumulation of traffic. Under such circumstances there is temporarily and to a limited extent a failure by a carrier to fulfill its obligations as a common carrier. Such failure is unlawful unless it has sufficient justification, and, with respect to interstate traffic, also violates that provision of the act to regulate commerce which requires that carriers subject thereto shall "furnish * * * transportation upon reasonable request therefor." That some embargoes may be justifiable is obvious, but carriers may not, under the guise of an embargo, attempt to accomplish results which the law requires shall be effected only by means of published tariffs. The tariff of the Iron Mountain contained no restriction against shipments of lumber to Cypress.

We find that it was the duty of the St. Louis, Iron Mountain & Southern Railway Company to accept and forward the shipment as requested by the shipper; that as a result of its refusal to do so complainant was damaged to the extent of the difference between the charges collected as stated and those that would have accrued had the shipment been forwarded over the route specified by complainant, and that complainant is entitled to reparation from the St. Louis, Iron Mountain & Southern Railway Company in the sum of \$19.77, with interest. An order awarding reparation will be entered, but as the circular referred to was withdrawn on November 5, 1915, no order with reference thereto is necessary.

No. 9064.

UNION HAY COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted November 8, 1916. Decided July 7, 1917.

Demurrage charges collected on a carload of hay at Chicago, Ill., not found to have been unlawfully assessed. Complaint dismissed.

David R. Thomas for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling hay, at Minneapolis, Minn. By complaint, filed July 22, 1916, it alleges that the demurrage charges collected by defendants at Chicago, Ill., on a carload of hay shipped from Strader, Wis., were unlawful. Reparation is asked.

The shipment, which was consigned to the Consumers Company, Chicago, was placed for unloading November 4, 1914, but was refused by the consignee because of bad condition. Request for disposition instructions was made the same day by the Chicago, Milwaukee & St. Paul Railway Company, the delivering carrier. On November 7, complainant presented to it a proposed bill of lading consigning the car to St. Louis, Mo. This was refused because of an embargo declared by the federal government the same day against Wisconsin hay on account of reported foot-and-mouth disease infection. The hay was disposed of in Chicago on November 16. The demurrage charges assailed accrued between November 7 and 16.

Federal embargoes are declared in the interest of the general public and must be observed. By observing them the carrier incurs no liability to the shipper whose goods are embargoed. We find that the charges collected were lawful. The complaint will be dismissed.

An appropriate order will be entered.

No. 9032.

J. C. FAMECHON COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted January 2, 1917. Decided July 7, 1917.

Track storage charges at Kansas City, Mo., on certain carloads of potatoes shipped from various points in Minnesota not shown to have been unreasonable or otherwise in violation of the act. Complaint dismissed.

O. W. Tong for complainant.

R. B. Scott and *Kenneth F. Burgess* for Chicago, Burlington & Quincy Railroad Company.

R. V. Gleason for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling potatoes at Minneapolis, Minn. By complaint, filed July 10, 1916, it alleges that certain track storage charges collected on 17 carloads of potatoes at Kansas City, Mo., during January and February, 1915, were unreasonable. Reparation is asked.

The shipments, which originated at various points in Minnesota, were consigned by complainant to itself at Kansas City under order-notify bills of lading, and were part of a total of 70 cars forwarded to that point for account of one customer. All were delivered at destination by the Chicago, Burlington & Quincy Railroad, hereinafter called defendant. The shipments, having been refused, were detained at Kansas City after notice of arrival and lapse of free time, and defendant assessed and collected demurrage and track storage charges thereon in accord, it is admitted, with its applicable tariff provisions. The provision under which the track storage charges were assessed is as follows:

Cars held for loading, unloading, inspection, reconsignment, or switching orders on all C., B. & Q. R. R. tracks south of the Missouri River, other than private or industrial tracks within the switching limits of Kansas City, Mo., as named in C., B. & Q. I. C. C. No. 10444, G. F. O. 26-D, revised pages thereto or reissues thereof, will be subject to track storage charges as per schedules shown below.

The reasonableness *per se* of the track storage charges is not called in question. Complainant bases its case substantially upon three grounds: (1) That the track storage provision did not meet the requirements of rules 4 (g) and 4 (h) of Tariff Circular 18-A, in that it did not apprise a shipper that cars billed to shipper's order would be placed on the tracks where track storage charges applied; (2) that without orders from complainant to the contrary, which were not given, the shipments in question should not have been moved into Kansas City proper, to the tracks described, but should have been held in defendant's classification yard at Murray's, on the north side of the Missouri River, about $2\frac{1}{2}$ miles from defendant's Kansas City terminals, at which yard storage charges would not have accrued; and (3) that, by reason of a special notation placed by it on the bills of lading, complainant was entitled to prompt notice by defendant of the nonacceptance of the shipments, in order that detention charges might be avoided.

Rule 4 (g) requires such explanatory statement to be made in the tariffs regarding rates and rules therein as may be necessary to remove all doubt respecting their proper application, and rule 4 (h) requires the showing of the title of rules or regulations in bold type and also provides that a special rule applying to a particular rate must be shown in connection with and on the same page of the tariff with such rate. Other than private or industrial tracks, all of defendant's tracks in Kansas City proper, the destination in the billing, are expressly within the purview of the track storage provision, and it does not appear that the provision violates either of the tariff rules cited. It is clear in its application, precise in its terms, and the particular charges which apply appear on the same page of the tariff with the provision.

Murray yard, where complainant contends the cars should have been held, is north of the Missouri River, outside of the corporate, but within the switching, limits of Kansas City, about $2\frac{1}{2}$ miles from the yards where deliveries and inspections of perishable freight destined to Kansas City are customarily made. While some of the bills of lading bore notations indicating that Oklahoma destinations were ultimately intended, the fact remains that all of the shipments were consigned to Kansas City, expressly subject to inspection there, and the billing instructions were observed by defendant. It is conceded by complainant that it made the shipments in full expectation that they would be accepted at Kansas City, whatever disposition might thereafter be made of them by the purchaser. They were placed where cars of perishables are usually placed and held if not unloaded, and were handled in precisely the same manner as were the remainder of the 70 cars above mentioned. It is said for defendant

that it would have held the cars at Murray yard if requested, but no request or instruction to that effect was given, and detention at that point without such instructions would not have comported with defendant's undertaking under the bills of lading.

The bills of lading, or some of them, also carried the following notation:

Important. If delivery of car is not effected promptly, agent at destination must wire J. C. Famechon Company, Minneapolis, at their expense.

Complainant's witness testified that the only notice it had was received from the party to be notified, after the track storage charges and demurrage had accrued. It contends that the failure of defendant to observe the instructions on the bills of lading was responsible for the detention of the cars and that collection of track storage charges under such circumstances was unreasonable.

The notation, however, is not a part of the uniform bill of lading used by defendant in conformity with its tariffs, but is a special provision printed by complainant on the face of the otherwise standard forms, by means of which it seeks to obtain a special or different service from that ordinarily required. In *Kehoe & Co. v. N., C. & St. L. Ry. Co.*, 14 I. C. C., 555, which involved demurrage on a similar order-notify shipment, we declined to impose upon the carriers the duty of telegraphing to the consignor in the event a shipment is refused at destination. Assuming that the notation in question was in fact brought to the attention of the defendant's agent at destination, his duty went no further than to give to the intended purchaser the notice of arrival of the cars stipulated in the billing instructions, and that duty, it appears, was performed.

We find that the track storage charges assailed are not shown to have been unreasonable or otherwise violative of the act. An order dismissing the complaint will be entered.

CASES DISPOSED OF BY THE COMMISSION WITHOUT
PRINTED REPORT DURING THE TIME COVERED BY
THIS VOLUME.

7503. *MEPHAM & Co. v. St. L. & S. F. R. R. Co. ET AL.* Rates on petroleum tailings in carloads from Cherryvale, Kans., to East St. Louis, Ill. *C. H. Rodehaver* for complainant. *R. Dunlap, T. J. Norton, and T. Bond* for defendants. Complaint satisfied. Dismissed May 14, 1917.

8838. *BALTIMORE ROOFING & ASBESTOS MFG. Co. v. W. M. RY. Co. ET AL.* Rates on building paper, asbestos millboard, and asbestos cement, c. l. and l. c. l., from Asbestos, Md., to New England points and various other points. *G. L. Horn* for complainant. *W. L. Kinter, D. G. Gray, F. L. Ballard, H. W. Bicklé, G. S. Patterson, S. S. Perry, Reed, Smith, Shaw & Seal, and C. B. Northrop* for defendants. Dismissed on request of complainant July 3, 1917.

9041. *ZELNICKER SUPPLY Co. v. P. & G. N. R. R. Co. ET AL.* Rates on one carload of old or relay rails from Paris, Tex., to Fort Towson, Okla. *J. D. Fidler* for complainant. No appearances for defendants. Transferred to special docket for adjournment June 28, 1917.

9066. *CHRISTOPHER & SIMPSON IRON WORKS Co. v. C., P. & St. L. R. R. Co. ET AL.* Rate on one carload of iron beams, columns, and girders from St. Louis, Mo., to Jerseyville, Ill. *C. H. Rodehaver* for complainant. *F. W. Brown and T. R. Farrell* for defendants. Dismissed on request of complainant May 14, 1917.

9088. *LAMB-FISH LUMBER Co. v. Y. & M. V. R. R. Co. ET AL.* Rates on hardwood lumber from Charleston, Miss., to Mobile, Ala., and Pensacola, Fla. *Geo. Land* for complainant. *J. L. Sheppard and E. A. Smith* for defendants. Complaint satisfied. Dismissed May 14, 1917.

9178. *KENNEDY v. S. P. Co.* Rate on second-hand contractor's outfit and one carload of rough lumber from Eugene, Oreg., to Los Angeles, Cal. *R. Young and A. J. Sherer* for complainant. *F. B. Austin* for defendant. Dismissed for want of prosecution May 14, 1917.

9314. *ÆTNA EXPLOSIVES Co., INC., v. A. G. S. R. R. Co. ET AL.* Rates for transportation of 309 new empty tank cars from Milton and Sharon, Pa., and Warren, Ohio, to points in Alabama, Florida, Georgia, Illinois, Indiana, Louisiana, Mississippi, Ohio, Pennsylvania, South Carolina, and Tennessee. *J. C. Townsend and J. L. Malone* for complainant. *H. W. Bicklé, E. H. Hart, P. McCollester, and M. B. Pierce* for defendants. Dismissed on request of complainant May 14, 1917.

9351. *PORTLAND TRAFFIC & TRANSPORTATION ASSO. ET AL. v. C., M. & St. P. RY. Co. ET AL.* Rates on flower pots, l. c. l., between points in Oregon and points in California, Idaho, and Washington, and between points in Oregon via interstate routes. *Wm. C. McCulloch* for complainants. *R. C. Fyfe* for defendants. Dismissed on request of complainant May 14, 1917.

9352. *PORTLAND TRAFFIC & TRANSPORTATION ASSO. v. C., M. & St. P. RY. Co. ET AL.* Rates on edible nuts, including peanuts, between points in Oregon and points in California, Idaho, and Washington, and between points in Oregon via interstate route. *Wm. C. McCulloch* for complainant. *R. C. Fyfe* for defendants. Complaint satisfied. Dismissed May 14, 1917.

9438. *SUGAR LAND MFG. Co. v. A. & R. R. R. Co. ET AL.* Rates on blackstrap and edible molasses from Sugar Land, Tex., to Ada and Oklahoma City, Okla., Cape
45 I. C. C.

Girardeau, Mo., Davenport, Iowa, East St. Louis, Ill., and Neodesha, Kans. *S. C. Griffin* for complainant. *G. Waldo, H. C. Bush, F. H. Wood, J. T. Bowe, Thompson, Barwise & Wharton, R. C. Fulbright, J. F. Garvin, M. J. Dowlin, F. R. Datzell, T. J. Norton*, and *L. M. Hogsett* for defendants. Dismissed on request of complainant May 30, 1917.

9441. *JOSEPH IRON CO. v. C., N. O. & T. P. RY. CO. ET AL.* Rates on scrap iron from Chattanooga, Tenn., to Huntington, W. Va. *H. C. Barnes* for complainant. Dismissed May 14, 1917.

9509 and Sub. 1. *SECURITY COAL & MINING CO. OF MISSOURI v. I. C. R. R. CO. ET AL.* Coal-car distribution at mines on the I. C. R. R. and other roads in southern Illinois. *R. W. Ropiequet* for complainants. *C. B. Cardy, R. V. Fletcher, K. L. Burgess, H. G. Herbel*, and *F. G. Wright* for defendants. Dismissed on request of complainants May 17, 1917.

9514. *NORTHERN ANTHRACITE COAL CO. ET AL. v. L. V. R. R. CO. ET AL.* Rates on semianthracite coal from Pennsylvania mines to various New York points. *M. J. Murray, Jr.*, and *R. S. Houck* for complainants. *D. Swift, T. H. Burgess, A. M. Hartung*, and *S. C. Pratt* for defendants. Dismissed on request of complainants June 9, 1917.

9527. *NEW YORK PRODUCE EXCHANGE v. B. & O. R. R. CO. ET AL.* Storage charges on flour at Hoboken, Jersey City, or New York Lighterage Station, N. Y. *N. P. Cullom* for complainant. *C. E. Miller* for defendants. Dismissed on request of complainant June 20, 1917.

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7849. *MUTUAL OIL CO. v. C., B. & Q. R. R. Co.* May 14, 1917. Reparation for \$2,022.88, on shipments of petroleum and certain of its products from Cowley, Wyo., to Highwood and Coffee Creek, Mont., on account of unreasonable charges.

7663. *BALFOUR QUARRY CO. v. So. Ry. Co.* May 14, 1917. Reparation for \$161.46, on account of unreasonable and illegal charges on shipments of crushed stone from Montford and Rockliff, N. C., to Greenville, S. C., and from Rockliff to Greenwood and Spartanburg, S. C.

8129. *NATIONAL LEAGUE OF COMMISSION MERCHANTS v. A. C. L. R. R. Co.* May 14, 1917. Reparation for \$317.05, on account of an unreasonable estimated weight applied to shipments of cabbages from Coleman and Sumterville, Fla., to New York, N. Y.

6758. *MAJOR STAVE CO. v. M., D. & G. R. R. Co.* May 14, 1917. Reparation for \$111.08, on account of unreasonable and illegal charges collected on shipments of oak staves from Arkadelphia, Ark., to Texas City, Tex.

6749. *CRUIKSHANK & ROBINSON v. PA. R. R. Co.* May 14, 1917. Reparation for \$1,833.54, on shipments of hay from points in Canada to Norfolk, Va., on account of unreasonable rates.

6764. *CUDAHY PACKING CO. v. A., T. & S. F. Ry. Co.* May 14, 1917. Reparation for \$48.58, on shipments of packing-house products from Wichita, Kans., to Salt Lake City, Utah, on account of unreasonable charges.

8503 (Sub.-No. 4). *HOGAN & WEST v. G. N. Ry. Co.* June 14, 1917. Reparation for \$17.28, on shipment of lumber from Springston, Idaho, to Antelope, Mont., on account of unreasonable charges.

8327. *EDWARDS & BRADFORD LUMBER CO. v. A. A. R. R. Co.* June 14, 1917. Reparation for \$271, on account of unreasonable demurrage charges on shipments of coal held for reconsignment at Frankfort, Mich.

7509. *MILLER & LUX v. S. P. Co.* June 14, 1917. Reparation for \$1,144.44, on shipments of range cattle from points in California to destinations in California and Nevada, on account of unreasonable charges.

8420. *CHICAGO CREOSOTING CO. v. C. & E. I. R. R. Co.* June 14, 1917. Reparation for \$975.35, on account of damages due to the noncompliance with complainant's diversion orders on shipments of lumber from points in Alabama, Mississippi, and Louisiana to Terre Haute, Ind., and reconsigned to Waukegan, Ill.

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- Baltimore, Ohio, to Sapulpa, Okla. Strawboard boxes, fillers, and partitions, 465.
- Bangor, Me., from Boston, Mass. Fresh meat, 119.
- Bans Spur, Oreg., from Portland, Oreg., consigned at Silverton, Oreg., for export. Ties, 79.
- Belleville, Kans., from Oak Hills district, Colo. Bituminous coal, 455.
- Benton, Ill., to Clarksdale, Miss. Bituminous coal, 108.
- 45 I. C. C.

- Berkeley, Cal., from Ogden, Utah. Motorcycles, 63.
 Big Bay, Mich., to Boston, Mass. Tenpins, 175.
 Boise, Idaho, from Portland, Oreg., Seattle and Tacoma, Wash., and Saltair, Utah. Salt, 12.
 Boston, Mass., to Bangor, Me. Fresh meat, 119.
 Boston, Mass., from Big Bay, Mich. Tenpins, 175.
 Boston, Mass., from Cairo, Ill., reconsigned at Hartford, Conn. Lumber, 71.
 Boston, Mass., from Livermore Falls, Me., for export. News printing paper, 453.
 Boston, Mass., to Muskogee, Okla. Cranberries, 531.
 Boston, Mass., to Nepperhan, N. Y. Wool and mohair, 103.
 Boston, Mass., from Vermont. Milk, 393.
 Boy River, Minn., to Arnegard, N. Dak. Posts, 547.
 Brazil, Ind., to York, Nebr., and Monteith, Iowa. Common building brick, 584.
 Broadford Junction, Pa., from Lewisburg and Edwards, Ky. Crossties, 162.
 Bronx Terminal, N. Y., to Jersey City, N. J., and return. Lumber, 3.
 Brooklyn, N. Y., to Jersey City, N. J. Fresh meat, 554.
 Brooklyn, N. Y., to Richmond, Cal. Tin can faucets and caps, 557.
 Brunswick, Me., from Livermore Falls, Me., destined to Philadelphia, Pa. News print paper, 30.
 Buffalo, N. Y., from Selkirk, Manitoba. Fresh fish, 363.
 Buffville, Kans., to Chappell, Nebr. Building brick, 193.
 Burnside, Ky. Interchange of traffic, 444.
 Butler, Pa., to Los Angeles, Cal. Empty glass bottles and bottle stoppers, 191.
 Butte, Mont., from Gypsum, Utah. Gypsum plaster, 433.
 Butte, Mont., from Saltair, Utah. Salt, 12.
 Cache, Okla., to New Orleans, La., concentrated and compressed at Lawton, Okla. Cotton, 171.
 Cairnes, Ky., to Dry Branch, Ga. Bituminous coal, 83.
 Cairo, Ill., from Austin, Ind. Kraut, 181.
 Cairo, Ill., to Hartford, Conn., reconsigned to Boston, Mass. Ash lumber, 71.
 Cairo, Ill., from Thebes, Ill., originating at Thornton, Ark., and New Willard and Lufkin, Tex. Yellow-pine lumber, 513.
 Caldwell, Kans., from Oak Hills district, Colo. Bituminous coal, 455.
 California to Miles City, Mont. Lemons, 578.
 California to New York, Massachusetts, Pennsylvania, Ohio, and Louisiana. Artichokes, 77.
 California to various destinations in the United States and Canada. Oranges; pre-cooling and pre-icing charges, 248.
 Canada from California. Oranges, 248.
 Cape May, N. J., from New York, New Jersey, Pennsylvania, Delaware, and Maryland. Milk, cream, buttermilk, skim milk, condensed milk, and pot cheese, 371.
 Carlton, N. Y., from Shingle House, Pa. Heading, 169.
 Carmel, Ind., to Plano, Ill. Agricultural implements, 151.
 Carney's Point, N. J., from Chester, Pa. Slag and refuse, 479.
 Carrier, Okla., to Wichita, Kans. Live stock, 87.
 Central freight association territory. Proposed new system of rates, 254.
 Central freight association territory from Green Bay and Marinette, Wis. Excelsior and excelsior pads, 507.
 Chaffee, Mo., to Cleveland, Ohio. Logs, 56.
 Chanute, Kans., to Woolstock, Iowa. Brick, 481.
 Chappell, Nebr., from Buffville, Kans. Building brick, 193.
 Chattanooga, Tenn., to Jacksonville, Fla. Cast-iron service boxes, 173.

- Chattanooga, Tenn., from Ontario, N. Y. Iron ore, 539.
 Chester, Pa., to Carney's Point, N. J. Slag and refuse, 479.
 Chicago, Ill. Demurrage charges on hay, 597.
 Chicago, Ill., from Agnew, Cal. Alcohol, 127.
 Chicago, Ill., to Arizona. Passenger fares, 436.
 Chicago, Ill., from Gary, Ind. Empty beer containers, 67.
 Chicago, Ill., from Green Bay and Marinette, Wis. Excelsior and excelsior pads, 507.
 Chicago, Ill., to Indianapolis, Ind., and Ohio River crossings. Poultry feed, 20.
 Chicago, Ill., from Iowa. Dressed poultry, butter, and eggs, 8.
 Chicago, Ill., from Kansas City, Kans. Soap stock, 577.
 Chicago, Ill., to Lake Geneva, Kewaunee, Elkhorn, and Springfield, Wis. Brewers' dried grain, 132.
 Chicago, Ill., from Lufkin, Tex., stopped in transit at Thebes, Ill., and reshipped to Cairo, Ill. Yellow-pine lumber, 513.
 Chicago, Ill., from St. Paul, Minn. Sisal fiber, 105.
 Chicago, Ill., to Salt Lake City and Ogden, Utah, and Tolson, Mont. Motorcycles, 63.
 Chicago, Ill., from Spokane, Wash. Inedible tallow and grease, 583.
 Chicago, Ill., to various destinations. Asphalt shingles and prepared roofing, 573.
 Chickasha, Okla., to Sioux City, Iowa. Cotton mattress stock, 91.
 Christopher, Ill., to Clarksdale, Miss. Bituminous coal, 108.
 Christopher, Ill., to Purdin, Mo., reconsigned to Linneus, Mo. Coal, 209.
 Chugwater, Wyo., to Cleveland, Ohio. Wool, 69.
 Cincinnati, Ohio, from Arkansas, Louisiana, Oklahoma, Texas, and Missouri. Cotton-seed oil, soap stock, tank bottoms, and inedible tallow, 25.
 Cincinnati, Ohio, from Sale Creek, Tenn., reconsigned to Dayton, Ohio. Peaches, 559.
 Clarksdale, Miss., from Mercer and De Koven, Ky., and grouped points, and Benton and Christopher, Ill., and grouped points. Bituminous coal, 108.
 Clearfield region, Pa., to Harrisville and Newton Falls, N. Y. Bituminous coal, 157.
 Clearing, Ill., to various destinations. Asphalt shingles and prepared roofing, 573.
 Cleveland, Ohio, to Arkansas City, Kans. Soda-fountain counters and fixtures, 141.
 Cleveland, Ohio, from Chaffee, Mo. Logs, 56.
 Cleveland, Ohio, from Slater, Wyo. Wool, 69.
 Clinton, Iowa, from Illinois. Corn, 211.
 Coatesville, Pa., from Philadelphia, Pa. Pyrites cinder, 85.
 Colby, Kans., from Oak Hills district, Colo. Bituminous coal, 455.
 Cold Springs, Okla., to Wichita, Kans. Live stock, 87.
 Collinsville, Tex., to Frederick, Okla. Cook shack and contents, 473.
 Colton, Cal., from Laredo, Tex., originating at Mexico City, Mexico. Fertilizer, 155.
 Columbus, Ohio, to Port Arthur and Texas City, Tex. Steel rolling doors and parts, 74.
 Cookstown, N. J., to Muskogee, Okla. Cranberries, 531.
 Corsicana, Tex., to Gillett, Wis. Gasoline, 213.
 Cosby, Mo., from Iola, Kans. Cement, 167.
 Council Bluffs, Iowa, from Wichita, Kans. Brooms, 143.
 Covington, Okla., to Wichita, Kans. Live stock, 87.
 Cumberland River landings to and from points on the C., N. O. & T. P. Ry. Through routes and joint rates, 444.
 Cypress, Ill., from Moark, Ill., reconsigned at Dupu, Ill., to Danville, Ill. Oak lumber, 594.
 Cypress, Ill., from Thornton, Ark., and New Willard, Tex., stopped in transit at Thebes, Ill., and reshipped to Cairo, Ill. Yellow-pine lumber, 513.
 Dacoma, Okla., to Wichita, Kans. Live stock, 87.
 45 I. C. C.

- Dallas, Tex., to Oklahoma. Slack barrels, 468.
- Danville, Ill., from Moark, Ark., reconsigned at Dupo, Ill. Oak lumber, 594.
- Davidson, Okla., to New Orleans, La., concentrated and compressed at Lawton, Okla. Cotton, 171.
- Dayton, Ohio, from Sale Creek, Tenn., reconsigned at Cincinnati, Ohio. Peaches, 559.
- De Koven, Ky., to Clarksdale, Miss. Bituminous coal, 108.
- De Ridder, La., to Oakland and Wiota, Iowa. Yellow-pine lumber, 571.
- Delaware to Philadelphia, Pa., and Atlantic City, Cape May, and other points on the New Jersey seacoast. Milk, cream, buttermilk, skim milk, condensed milk, and pot cheese, 371.
- Delhi, La., to Memphis, Tenn. Club-turned spokes, 121.
- Demopolis, Ala., to Mount Sterling, Ky., diverted to Lexington, Ky., and reconsigned to Martinsburg, W. Va. Yellow-pine lumber, 575.
- Denver, Colo., from Albany, Tex. Pecans, 117.
- Detroit, Mich., from Mountainburg, Ark., reconsigned at St. Louis, Mo. Peaches, 581.
- Dresden, Kans., from Oak Hills district, Colo. Bituminous coal, 455.
- Dry Branch, Ga., from Cairnes, Ky. Bituminous coal, 83.
- Dunmore, Pa., to Middletown, N. Y. Anthracite coal, 587.
- Dupo, Ill., from Moark, Ark., reconsigned to Danville, Ill. Oak lumber, 594.
- East Boston, Mass., to Nepperhan, N. Y. Wool and mohair, 103.
- East Cambridge, Mass., to Nepperhan, N. Y. Wool and mohair, 103.
- East Point, Ga., from Selma, Ala. Asphaltum-coated cotton fabrics, 123.
- East St. Louis, Ill., to Manitowoc, Wis. Steel rails, 225.
- Eastern territory to Salt Lake City and Ogden, Utah, and Tolston, Mont. Motorcycles, 63.
- Edwards, Ky., to Broadford Junction, Pa. Crossties, 162.
- Elgin, Okla., to New Orleans, La., concentrated and compressed at Lawton, Okla. Cotton, 171.
- Elkhorn, Wis., from Chicago, Ill. Brewers' dried grain, 132.
- Everett, Wash., from Lordsburg, Cal., reconsigned at Portland and Medford, Oreg. Oranges and lemons, 65.
- Fairbury, Nebr., from Oak Hills district, Colo. Bituminous coal, 455.
- Fairville, N. B., to Hoosick Falls, N. Y., milled in transit at Long Pond, Me. Lumber, 195.
- Falls Junction, Ohio, to Mascoutah, Ill. Black powder, 199.
- Fort Smith, Ark., from Cookstown, N. J. Cranberries; fourth section, 531.
- Fort Smith, Ark., to St. Louis, Mo. Whisky, 101.
- Fort Wayne, Ind., to Ivorydale, Ohio. Cottonseed oil, 484.
- Franklin, La., from Gunter, Tex., reconsigned to Rayne, La. Oats, 179.
- Frederick, Okla., from Collinsville, Tex. Cook shack and contents, 473.
- Fresno, Cal., to New York, N. Y. Fig pulp, 60.
- Galveston, Tex., to and from New York, N. Y. Operation of boat lines, 505.
- Gary, Ind., to Chicago, Ill. Empty beer containers, 67.
- Gatliff, Ky., to Parkersburg, Iowa, diverted in transit to Jesup, Iowa. Lump soft coal, 111.
- Gem, Kans., from Oak Hills district, Colo. Bituminous coal, 455.
- Gillett, Wis., from Corsicana, Tex. Gasoline, 213.
- Goltry, Okla., to Wichita, Kans. Live stock, 87.
- Goodland, Kans., from Oak Hills district, Colo. Bituminous coal, 455.
- Grand Tower, Ill., to St. Louis, Mo. Fruit and vegetable baskets, 485.

- Granite Quarry, N. C., to Wyndmoor, Pa. Rubblestone, 561.
- Grants Pass, Oreg., from Saltair, Utah. Salt, 12.
- Green Bay, Wis., to Chicago, Ill., and C. F. A., trunk line, and southern territories.
- Excelsior and excelsior pads, 507.
- Gunter, Tex., to Franklin, La., reconsigned to Rayne, La. Oats, 179.
- Gypsum, Utah, to Pocatello, Idaho, Butte, Mont., and Portland, Oreg. Gypsum plaster, 433.
- Hamilton, Mont., to Seattle, Wash. Potatoes, 131.
- Hanover Farms, N. J., to Muskogee, Okla. Cranberries, 531.
- Hardwick, Vt., to Warren, Ohio. Building granite, 214.
- Harris, N. J., to Muskogee, Okla. Cranberries, 531.
- Harrisburg, Ill., to Milbank, S. Dak. Bituminous lump coal, 183.
- Harrisville, N. Y., from Pennsylvania mines. Bituminous coal, 157.
- Hartford, Conn., from Cairo, Ill., reconsigned to Boston, Mass. Ash lumber, 71.
- Hartwell, Ga., to Toccoa, Ga., compressed and reshipped to various destinations.
- Cotton, 564.
- Helena, Mo., from Iola, Kans. Cement, 167.
- Herington, Kans., from Oak Hills district, Colo. Bituminous coal, 455.
- High Hill, Mo., to Ottawa, Ill. Fire clay, 61.
- Hillsboro, Ala., to Ivorydale, Ohio. Cottonseed oil, 177.
- Hoboken, N. J., from New York and Pennsylvania. Milk, cream, buttermilk, skim milk, condensed milk, and pot cheese, 412.
- Homestead, Pa., from Pittsburgh, Pa., destined to New York, N. Y., for export.
- Petroleum, 216.
- Honesdale, Pa., to Middletown, N. Y. Anthracite coal, 587.
- Hoosick Falls, N. Y., from New Brunswick, Canada, milled in transit at Long Pond, Me. Lumber, 195.
- Hosford, Fla., to Pensacola, Fla., for export. Lumber, 470.
- Hosston, La., to Texarkana, Tex. Yellow-pine lumber, 364.
- Huntington, Oreg., from Saltair, Utah. Salt, 12.
- Hyannis, Mass., from Yellow Pine, La. Yellow-pine lumber, 135.
- Idaho from Portland, Oreg., Seattle and Tacoma, Wash., and Saltair, Utah. Salt, 12.
- Idaho to Salt Lake City and Ogden, Utah, and Tolston, Mont. Motorcycles, 63.
- Illinois to Clinton, Iowa, milled and reshipped to various destinations. Corn, 211.
- Illinois to Salt Lake City and Ogden, Utah, and Tolston, Mont. Motorcycles, 63.
- Illinois to various destinations. Prepared roofing and asphalt shingles, 573.
- Illinois to Vincennes, Ind. Corn, 447.
- Illinois mines to Clarksdale, Miss. Bituminous coal, 108.
- Indianapolis, Okla., to New Orleans, La., concentrated and compressed at Lawton, Okla. Cotton, 171.
- Indiana to various destinations. Prepared roofing and asphalt shingles, 573.
- Indiana-Illinois state line, points east of, from Trenton, Mo. Dressed poultry, butter, and eggs, 8.
- Indianapolis, Ind. Demurrage on lumber, 566.
- Indianapolis, Ind., from Chicago, Ill. Poultry feed, 20.
- Iola, Kans., to Union Star, Helena, and Cosby, Mo. Cement, 167.
- Iowa to Chicago, Ill. Dressed poultry, butter, and eggs, 8.
- Iowa to Kansas City, Mo., reshipped to Kansas. Corn and oats, 562.
- Ivorydale, Ohio, from Arkansas, Louisiana, Oklahoma, Texas, and Missouri. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 25.
- Ivorydale, Ohio, from Fort Wayne, Ind. Cottonseed oil, 484.
- Ivorydale, Ohio, from Hillsboro, Ala. Cottonseed oil, 177.
- Jacksonville, Fla., from Chattanooga, Tenn. Cast-iron service boxes, 173.

- Jeffersonville, Ind., to Nashville, Tenn. Canned hominy and sauerkraut, 146.
- Jersey City, N. J., from Bronx Terminal, N. Y., and return. Lumber, 3.
- Jersey City, N. J., from Brooklyn, N. Y. Fresh meat, 554.
- Jersey City, N. J., from New York and Pennsylvania. Milk, cream, buttermilk, skim milk, condensed milk, and pot cheese, 412.
- Jesup, Iowa, from Gatliff, Ky. Lump soft coal, 111.
- Jones Point, N. Y., to various destinations. Prepared roofing and asphalt shingles, 573.
- Kansas. Car peddling privileges, 494.
- Kansas from Kansas City, Mo., originating in South Dakota, Iowa, and Minnesota. Corn and oats, 562.
- Kansas from Oak Hills district, Colo. Bituminous coal, 236, 455.
- Kansas City, Kans. Refining in transit of cottonseed oil, 577.
- Kansas City, Kans., to Chicago, Ill., St. Louis, Mo., and St. Bernard, Ohio. Soap stock, 577.
- Kansas City, Mo. Track storage charges on potatoes, 598.
- Kansas City, Mo., from Lawton and Ricketts, Iowa. Corn, 115.
- Kansas City, Mo., from Oak Hills district, Colo. Bituminous coal, 455.
- Kansas City, Mo., to Saltillo, Mexico. Refrigerating ice, 223.
- Kansas City, Mo., from South Dakota, Iowa, and Minnesota, reshipped to Kansas. Corn and oats, 562.
- Keepport, Ind., to Paulding, Ohio. Limestone, 475.
- Kemmerer, Wyo., from Saltair, Utah. Salt, 12.
- Kentucky mines to Arlington, Ga. Coal, 188.
- Kentucky mines to Clarksdale, Miss. Bituminous coal, 108.
- Kewaunee, Wis., from Chicago, Ill. Brewers' dried grain, 132.
- Kimberly, Wis., to New York, N. Y. Printing paper, 7.
- La Crosse, Wis., from New Orleans, La. Bananas, 217.
- Lake Charles, La., to Marne, Iowa. Yellow-pine lumber, 571.
- Lake Geneva, Wis., from Chicago, Ill. Brewers' dried grain, 132.
- Lakehurst, N. J., to Muskogee, Okla. Cranberries, 531.
- Lanesboro, Iowa, to Omaha, Nebr. Gravel, 113.
- Laredo, Tex., to Colton, Cal., originating at Mexico City, Mexico. Fertilizer, 155.
- Lawton, Iowa, to Kansas City, Mo. Corn, 115.
- Lawton, Okla. Concentration and compression of cotton on shipments from Elgin, Cache, Indianahoma, and Davidson, Okla., to New Orleans, La., 171.
- Levant, Kans., from Oak Hills district, Colo. Bituminous coal, 455.
- Lewisburg, Ky., to Broadford Junction, Pa. Crossties, 162.
- Lewiston, Idaho, from Portland, Oreg., and Seattle and Tacoma, Wash. Salt, 12.
- Lexington, Ky., to Martinsburg, W. Va., originating at Demopolis, Ala. Yellow-pine lumber, 575.
- Lincoln, Nebr., from Oak Hills district, Colo. Bituminous coal, 455.
- Linneus, Mo., from Christopher, Ill., reconsigned at Purdin, Mo. Coal, 209.
- Livermore Falls, Me., to Boston, Mass., for export. News printing paper, 453.
- Livermore Falls, Me., to Philadelphia, Pa., via Brunswick, Me. News print paper, 30.
- Locust Point, Md., to Mechanicsburg, Ohio. Ground phosphate, 160.
- Long Pond, Me. Milling in transit rules on lumber, 195.
- Lordsburg, Cal., to Everett, Wash., reconsigned at Portland and Medford, Oreg. Lemons and oranges, 65.
- Los Angeles, Cal., from Butler, Pa. Empty glass bottles and bottle stoppers, 191.
- Louisiana to Ivorydale, St. Bernard, and Cincinnati, Ohio. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 25.
- Louisiana from San Francisco, Cal., originating at Tobin and Vallemar, Cal. Artichokes, 77.

- Louisville, Ky., to Pensacola, Fla., for export. Rough mahogany lumber, 545.
- Lower peninsula of Michigan from Toledo, Ohio. Class and commodity rates, 527.
- Lufkin, Tex., to Chicago, Ill., stopped in transit at Thebes, Ill., and reshipped to Cairo, Ill. Yellow-pine lumber, 513.
- Manitowoc, Wis., from East St. Louis, Ill. Steel rails, 225.
- Marinette, Wis., to Chicago, Ill., C. F. A., trunk line, and southern territories. Excelsior and excelsior pads, 507.
- Marne, Iowa, from Lake Charles, La. Yellow-pine lumber, 571.
- Martin, Tenn., from Paducah, Ky. Ice, 359.
- Martin's Ferry, Ohio, to Medford, Oreg. Orchard heaters, 165.
- Martinsburg, W. Va., from Demopolis, Ala., reconsigned at Lexington, Ky. Yellow-pine lumber, 575.
- Maryland to Philadelphia, Pa., and Atlantic City, Cape May, and other points on the New Jersey seacoast. Milk, cream, buttermilk, skim milk, condensed milk, and pot cheese, 371.
- Mascoutah, Ill., from Falls Junction, Ohio. Black powder, 199.
- Massachusetts to Muskogee, Okla. Cranberries, 531.
- Massachusetts to Salt Lake City and Ogden, Utah, and Tolston, Mont. Motorcycles, 63.
- Massachusetts from San Francisco, Cal., originating at Tobin and Vallemar, Cal. Artichokes, 77.
- Maytown, Wash., to Rocky Ford, Colo. Lumber, 221.
- Mechanicsburg, Ohio, from Locust Point, Baltimore, Md. Ground phosphate, 160.
- Medford, Oreg., from Lordsburg, Cal., reconsigned to Everett, Wash. Oranges and lemons, 65.
- Medford, Oreg., from Martin's Ferry, Ohio. Orchard heaters, 165.
- Memphis, Tenn., to Arizona. Passenger fares, 436.
- Memphis, Tenn., from Arkansas and Missouri. Uncompressed cotton, 487.
- Memphis, Tenn., from Delhi, La. Club-turned spokes, 121.
- Memphis, Tenn., to New Orleans, La., and other points in the south and west. Washed coal, 93.
- Memphis, Tenn., from St. Francis, Ark. Steel rails, 185.
- Mercer, Ky., to Clarksdale, Miss. Bituminous coal, 108.
- Mexico City, Mexico, to Laredo, Tex., destined to Colton, Cal. Fertilizer, 155.
- Michigan to New York, N. Y. Potatoes, 203.
- Michigan from Toledo, Ohio. Class and commodity rates, 527.
- Middletown, N. Y., from Scranton, Avoca, Dunmore, Honesdale, Pittston, and Plains Junction, Pa. Anthracite coal, 587.
- Milbank, S. Dak., from Harrisburg, Ill. Bituminous lump coal, 183.
- Miles City, Mont., from Santa Paula, Santa Barbara, Tustin, and Whittier, Cal. Lemons, 578.
- Milwaukee, Wis. Absorption of switching on grain, 432.
- Milwaukee, Wis., to Oregon, Ill. Packing cases, 205.
- Milwaukee, Wis., from South Beloit, Ill. Sand and gravel, 529.
- Minneapolis, Minn., from Agnew, Cal. Alcohol, 127.
- Minnesota to Kansas City, Mo. Potatoes, 598.
- Minnesota to Kansas City, Mo., reshipped to Kansas. Corn and oats, 562.
- Minnesota to Oklahoma. Rental charges on refrigerator cars used in transporting potatoes, 523.
- Minnesota to Salt Lake City and Ogden, Utah, and Tolston, Mont. Motorcycles, 63.
- Missoula, Mont., from Portland, Oreg., and Seattle and Tacoma, Wash. Salt, 12.
- Missouri from Iola, Kans. Cement, 167.

- Missouri to Ivorydale, St. Bernard, and Cincinnati, Ohio. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 25.
- Missouri to Memphis, Tenn., and St. Louis, Mo. Uncompressed cotton, 487.
- Missouri from Oak Hills district, Colo. Bituminous coal, 236, 455.
- Missouri River, points east of, from Astoria and other points in Oregon, via Portland, Oreg. Through routes and joint rates on fish and merchandise, 230.
- Missouri River, points east of, from Tacoma, Wash. Lumber and other forest products, 227.
- Moark, Ark., to Dupon, Ill., reconsigned to Danville, Ill. Oak lumber, 594.
- Montana from Portland, Oreg., Seattle and Tacoma, Wash., and Saltair, Utah. Salt, 12.
- Monteith, Iowa, from Brazil, Ind. Common building brick, 584.
- Montrose, Kans., from Oak Hills district, Colo. Bituminous coal, 455.
- Moorhead, Miss., from Nettleton, Ark. Secondhand sawmill machinery, 549.
- Mount Sterling, Ky., from Demopolis, Ala., diverted to Lexington, Ky., and reconsigned to Martinsburg, W. Va. Yellow-pine lumber, 575.
- Mountain Home, Idaho, from Portland, Oreg., and Seattle and Tacoma, Wash. Salt, 12.
- Mountainburg, Ark., to St. Louis, Mo., reconsigned to Detroit, Mich. Peaches, 581.
- Muskogee, Okla., from New Jersey, Massachusetts, New York, N. Y., and Philadelphia, Pa. Cranberries, 531.
- Nashville, Tenn., from Jeffersonville, Ind. Canned hominy and sauer kraut, 146.
- Nebraska. Car peddling privileges, 494.
- Nebraska from Oak Hills district, Colo. Bituminous coal, 236, 455.
- Nepperhan, N. Y., from Boston, East Boston, and East Cambridge, Mass. Wool and mohair, 103.
- Nettleton, Ark., to Moorhead, Miss. Secondhand sawmill machinery, 549.
- New Brunswick, Canada, to Hoosick Falls, N. Y., milled in transit at Long Pond, Me. Lumber, 195.
- New England territory from Green Bay and Marinette, Wis. Excelsior and excelsior pads, 507.
- New Jersey to Muskogee, Okla. Cranberries, 531.
- New Jersey from New York, Pennsylvania, New Jersey, Delaware, and Maryland. Milk, cream, buttermilk, skim milk, condensed milk, and pot cheese, 371.
- New Jersey to Philadelphia, Pa., and Atlantic City, Cape May, and other points on the New Jersey seacoast. Milk, cream, buttermilk, skim milk, condensed milk, and pot cheese, 371.
- New Orleans, La., from Alabama mines, and Memphis, Tenn. Washed coal, 93.
- New Orleans, La., to Arizona. Passenger fares, 436.
- New Orleans, La., to La Crosse, Wis. Bananas, 217.
- New Orleans, La., to and from New York, N. Y. Operation of boat lines, 505.
- New Orleans, La., from Oklahoma, concentrated and compressed at Lawton, Okla. Cotton, 171.
- New Orleans, La., to Sheboygan, Wis. Wine, 207.
- New River, N. B., to Hoosick Falls, N. Y., milled in transit at Long Pond, Me. Lumber, 195.
- New Willard, Tex., to Cypress, Ill., stopped in transit at Thebes, Ill., and reshipped to Cairo, Ill. Yellow-pine lumber, 513.
- New York to Jersey City, Weehawken and Hoboken, N. J., and New York, N. Y. Milk, cream, buttermilk, skim milk, condensed milk, and pot cheese, 412.
- New York to Philadelphia, Pa., and Atlantic City, Cape May, and other points on the New Jersey seacoast. Milk, cream, buttermilk, skim milk, condensed milk, and pot cheese, 371.

- New York to Salt Lake City and Ogden, Utah, and Tolston, Mont. Motorcycles, 63.
- New York from San Francisco, Cal., originating at Tobin and Vallemar, Cal. Artichokes, 77.
- New York, N. Y. Demurrage on potatoes, 203.
- New York, N. Y., from Fresno, Cal. Fig pulp, 60.
- New York, N. Y., from Kimberly, Wis. Printing paper, 7.
- New York, N. Y., to Muskogee, Okla. Cranberries, 531.
- New York, N. Y., to and from New Orleans, La., and Galveston, Tex. Operation of boat lines, 505.
- New York, N. Y., from Pennsylvania and New York. Milk, cream, buttermilk, skim milk, condensed milk, and pot cheese, 412.
- New York, N. Y., from Pittsburgh, Pa. Petroleum, 216.
- New York, N. Y., from Rainelle, W. Va. White-oak lumber, 107.
- New York, N. Y., from Savannah, Ga. Onions, 568.
- New York, N. Y., to various destinations, originating in South America. Deferred cable messages, 33.
- Newton Falls, N. Y., from Pennsylvania mines. Bituminous coal, 157.
- Norfolk, Va., from Agnew, Cal. Alcohol, 127.
- North Yakima, Wash., from Saltair, Utah. Salt, 12.
- Oak Cliff, Tex., to Oklahoma. Slack barrels, 468.
- Oak Hills district, Colo., to Kansas, Nebraska, and Missouri. Bituminous coal, 455.
- Oak Hills district, Colo., to Kansas, Nebraska, Missouri, and South Dakota. Bituminous coal, 236.
- Oakland, Iowa, from De Ridder, La. Yellow-pine lumber, 571.
- Official classification territory. Classification of laundry, 361.
- Ogden, Utah, to Berkeley, Cal. Motorcycles, 63.
- Ogden, Utah, from eastern territory. Motorcycles, 63.
- Oglesby, Ill., from Allegheny, Pa. Nut punchings, 477.
- Ohio to Salt Lake City and Ogden, Utah, and Tolston, Mont. Motorcycles, 63.
- Ohio from San Francisco, Cal., originating at Tobin and Vallemar, Cal. Artichokes, 77.
- Ohio River crossings from Chicago, Ill. Poultry feed, 20.
- Oklahoma from Dallas and Oak Cliff, Tex. Slack barrels, 468.
- Oklahoma to Ivorydale, St. Bernard, and Cincinnati, Ohio. Cottonseed oil, soap stock, tank bottoms, and inedible tallow, 25.
- Oklahoma to Kansas City, Kans. Cottonseed oil, 577.
- Oklahoma from Minnesota and Wisconsin. Rental charges on refrigerator cars used in transporting potatoes, 523.
- Oklahoma to New Orleans, La., concentrated and compressed at Lawton, Okla. Cotton, 171.
- Oklahoma to Wichita, Kans. Live stock, 87.
- Omaha, Nebr. Switching charges on gravel, 113.
- Omaha, Nebr., from Oak Hills, Colo. Bituminous coal, 455.
- Omaha, Nebr., from Wichita, Kans. Brooms, 143.
- Onset Junction, Mass., to Muskogee, Okla. Cranberries, 531.
- Ontario, N. Y., to Chattanooga, Tenn. Iron ore, 539.
- Oregon from Seattle and Tacoma, Wash., Portland, Oreg., and Saltair, Utah. Salt, 12.
- Oregon, Ill., from Milwaukee, Wis. Packing cases, 205.
- Ottawa, Ill., from High Hill, Mo. Fire clay, 61.
- Paducah, Ky., to Martin, Tenn. Ice, 359.
- Parkersburg, Iowa, from Gatliff, Ky., diverted in transit to Jesup, Iowa. Lump soft coal, 111.
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- Western classification territory from eastern territory. Motorcycles, 63.
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- Wilson, Okla., from Willow, Tex. Yellow-pine lumber, 5.
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- Womble, Ark., to Toronto, Canada. Staves, 153.
- Woolstock, Iowa, from Chanute, Kans. Brick, 481.
- Wyandotte, Mich., to Powell River, B. C. Sulphate of alumina, 482.
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- York, Nebr., from Brazil, Ind. Common Building Brick, 584.

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[The number in parentheses following citation indicates where paragraph occurs or subject is considered.]

ABSORPTION.

On shipment of gravel from Lanesboro, Iowa, to Omaha, Nebr., the refusal of the Chicago Great Western to absorb more than \$7 of the switching charge, pursuant to its tariff, not shown to have been unreasonable or prejudicial. *Sunderland Bros. Co. v. C. G. W. R. R. Co.* 113 (114).

Cancellation of the absorption of the Indiana Northern's switching charges on interstate traffic to and from complainants' industry, while absorbing such charges on similar traffic to and from industries located on lines of defendants, other than the Indiana Northern, had the effect of increasing the transportation charges which have not been justified. Reparation awarded. *Oliver Chilled Plow Works v. N. Y. C. R. R. Co.* 356 (358).

A trunk line can not be compelled to absorb the switching charges of a connecting line in the absence of discrimination or undue prejudice. *Wood & Son v. Erie R. R. Co.* 587 (589).

ADAMSON LAW.

Case based on conditions as they existed before the effects of the European War and Adamson law was felt. *C. F. A. Class Scale Case*, 254 (256).

ADDITIONAL CHARGES.

Additional charges for delivering shipments of milk and cream to Brooklyn, N. Y., not shown unreasonable. *Milk and Cream Rates to New York City*, 412 (431).

ADJUSTMENT OF RATES.

Proposed system of new rates in C. F. A. territory superior to present rate structure, but not allowed to become effective. Suggestions made. *C. F. A. Class Scale Case*, 254 (285).

Any adjustment of rates that results in the imposition of comparatively high rates for short distances, and comparatively low rates for long distances, takes from the producer within the short distance territory whatever advantage he is entitled to because of his proximity to the consuming market, and gives a producer who has no such advantage of location access to the market on a basis of rates which unduly prefers him within the meaning of the act. *Milk and Cream to New York City*, 412 (424).

Table showing rates and revenue under present and proposed adjustment. *Oak Hills, Colo., Coal*, 455 (457).

Upon rehearing, differentials proposed by defendants, which amounts to a general readjustment of rates, on uncompressed cotton from certain points in Arkansas and Missouri to Memphis and St. Louis, approved, with certain exceptions. *City of Memphis v. C., R. I. & P. Ry. Co.* 487 (492).

ADMINISTRATIVE BODY.

To enable the Commission to prescribe reasonable rates the Congress has delegated to the Commission a quasi legislative or administrative power in the exercise of which there inheres necessarily and admittedly a wide but sound discretion aptly termed the "flexible limit of judgment which belongs to the power to fix rates." *Arlington Heights Fruit Exchange v. S. P. Co.* 248 (250).

ADMINISTRATIVE RULINGS.

Rule 3, Rules of Practice, cited. *Edwards & Loomis Co. v. P., C., C. & St. L. Ry. Co.* 20 (21); *Guggenhime & Co. v. A., T. & S. F. Ry. Co.* 60; *Browning Bros. Co. v. B. & A. R. R. Co.* 63; *Gamble-Robinson Fruit Co. v. S. P. Co.* 578 (579).

Rule 3 (e), Tariff Circular 18-A, cited. *Hale-Halsell Grocery Co. v. M., K. & T. Ry. Co.* 523, 524.

Rules 4 (g) and 4 (h), Tariff Circular 18-A, cited. *Hale-Halsell Grocery Co. v. M., K. & T. Ry. Co.* 523, 525; *Famechon Co. v. C., B. & Q. R. R. Co.* 598 (599).

Rule 5 (b), Tariff Circular 18-A, cited. *Memphis Freight Bureau v. A. & V. Ry. Co.* 121; *Empire Cotton Oil Co. v. S. A. L. Ry. Co.* 186 (187).

Rule 7 (a), Tariff Circular 18-A, cited. *McKay & Morgan v. L. & N. R. R. Co.* 146 (148).

Rule 10 (a), Tariff Circular 18-A, cited. *Hale-Halsell Grocery Co. v. M., K. & T. Ry. Co.* 523 (526).

Rule 77, Tariff Circular 18-A, cited. *Procter & Gamble Co. v. S. Ry. Co.* 177 (178); *Wyoming Shovel Works v. D. & H. Co.* 197 (198).

ADVANCE IN RATES.

In general:

Permission to file in simplified form, schedules proposing a general and horizontal increase in all freight rates except upon certain designated commodities, and to permit such rates to become effective on less than statutory notice, denied southern and western carriers, but eastern carriers permitted to increase their class rates between New York and Chicago on basis of scale mentioned, and to increase their other class rates applying intraterritorially between points in official classification territory, upon not less than five days notice. *The Fifteen Per Cent Case*, 303 (322, 324).

The consideration of a general increased rate case is necessarily a study of tendencies. *Id.* (314).

Conclusion reached in this case based upon compilations, made from sworn reports filed by the carriers, by the Commission's division of statistics. *Id.* (317).

Increased prices of materials and supplies, the increased cost of fuel, and increased wages are all significant and extremely important factors in the situation here considered. *Id.* (318).

Coal: Certain increases permitted in the joint rates on coal from Oak Hills, Colo., to stations south and west of Herington, Kans. *Oak Hills, Colo., Coal*, 455 (460).

Coca-Cola: Increased rating on Coca-Cola sirup in western classification from fourth class to second class, in l. c. l. shipments in bulk in barrels or kegs, not justified, and a third-class rating prescribed. On shipments made in other containers, the increased rating found justified. *Coca-Cola Co. v. A., T. & S. F. Ry. Co.* 461 (464).

Corn: Certain rates on corn from stations in Illinois on the B. & O. S. W. R. R. to Vincennes, Ind., which represent increases, found justified in part. *Old Vincennes Distillery Co. v. B. & O. S. W. R. R. Co.* 447 (452).

Cottonseed oil, etc.: Rates on cottonseed oil, soap stock, tank bottoms, and inedible tallow from points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas, to Ivorydale, St. Bernard, and Cincinnati, Ohio, increased in June, 1915, in conformity with the findings in *The Five Per Cent Case*, 32 I. C. C., 325, held upon further hearing to be unduly prejudicial. *Globe Soap Co. v. A. & S. Ry. Co.* 25 (29).

ADVANCE IN RATES—Continued.

Fertilizer: On shipments of fertilizer from Mexico City, Mexico, to Colton, Cal., the proportional rate from Laredo, Tex., to Colton, which represented an increase, found justified. *Olalda y Compania v. S. P. Co.* 155 (156).

Gypsum: Combination rate assessed on gypsum from Rito, N. Mex., to Riverside, Cal., represents an increase over rate in effect in 1910, which increase has not been justified. Rate found unreasonable and reparation awarded for violation of fourth section. *Riverside Portland Cement Co. v. A., T. & S. F. Ry. Co.* 139 (140).

Live stock: Cancellation of rates on live stock from Carrier, Covington, Goltry, Ames, Dacoma, and Cold Springs, Okla., to Wichita, Kans., which were prescribed in *Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, resulting in an advance, found not justified. Old basis ordered restored. *Brittain Bros. v. St. L. & S. F. R. R. Co.* 87 (90).

Lumber: Increased charge of \$3 per month for storage of lumber at pier 40, Philadelphia, found justified. *Sheip Mfg. Co. v. B. & O. R. R. Co.* 408 (410).

Lumber: Increase in factor of combination rate on lumber from Hosford, Fla., to River Junction, Fla., on shipments to Pensacola, Fla., for export not found justified. *Graves Bros. Co. v. A. N. R. R. Co.* 470 (472).

Lumber: On yellow-pine lumber from certain Louisiana points to Iowa destinations, the factor of combination rate applying beyond Fulton, La., greater than that formerly in effect constitutes an advance in rates that has not been justified. *Hudson River Lumber Co. v. L. & P. Ry. Co.* 571 (572).

Milk and cream: Rates on milk and cream and products, c. l., and l. c. l., to Philadelphia, Pa., Atlantic City, and Cape May, N. J., and other points, from various points in adjoining states, which represent increases, found unreasonable and unduly prejudicial to shippers and producers from near-by points and unduly preferential to producers and shippers from distant points. Reasonable rates prescribed. *Milk and Cream to Philadelphia, Pa.*, 371 (387).

Paper, news printing: No evidence offered to justify rate on, from Livermore Falls, Me., to Boston, Mass., for export, increased through error in tariff. Advance not justified and reparation awarded. *International Paper Co. v. M. C. R. R. Co.* 453 (454).

Sulphate of alumina: Increased joint fifth-class rate on, from Wyandotte, Mich., to Powell River, British Columbia, not justified. Reparation awarded on basis of commodity rate formerly in effect. *Powell River Co. v. M. C. R. R. Co.* 482 (483).

Salt: Rates on salt from Portland, Oreg., and Seattle and Tacoma, Wash., to points in Washington, Idaho, Montana, and Oregon, interstate, not found unreasonable as a whole, and where, in individual instances, the rates have been increased, they are found justified. *The Northwestern Salt Cases*, 12 (19).

AFFIDAVITS.

Affidavit of carrier's agent was admitted in evidence without objection, to show that reconsigning instructions had not been received by him. *Webster v. N. O. & N. E. R. R. Co.* 566 (567).

AGENT.

Carrier's agent at destination under no duty to notify consignor by wire that shipment was not promptly delivered. His duty went no further than to give intended purchaser notice of arrival. *Famechon Co. v. C., B. & Q. R. R. Co.* 598 (600).

AGGREGATE OF INTERMEDIATES. *See THROUGH AND LOCAL.*

AGREEMENT.

Parties agreed upon the record that if the Commission should authorize an increase on a proceeding as conducted in the instant case they would, if at a later date the situation should change and the Commission should be of the opinion that the increased rates were no longer just and reasonable, reduce them on an expression from the Commission to that effect, following a proceeding no more extensive than that in which the increase was permitted. The Fifteen Per Cent Case, 303 (311).

ALL-RAIL RATES.

All-rail and ocean-and-rail rates on cranberries from points in Atlantic seaboard territory to Muskogee, Okla., not shown unreasonable or unduly prejudicial. Goodner-Malone Co. *v.* M., O. & G. Ry. Co. 531 (534).

ALLOWANCES.

Failure of respondents to make an allowance to New York milk dealers for ferriage of their trucks to and from Jersey City terminals not found unreasonable. Milk and Cream Rates to New York City, 412 (421).

ALTERNATIVE RATES.

Assessment of commodity rate on shipments of artichokes from Tobin and Valle-mar, Cal., to San Francisco, Cal., destined to eastern points, illegal, as tariff contained alternative provision whereby lower class rate was applicable. Russi & Co. *v.* O. S. R. R. Co. 77 (78).

AMENDMENT OF COMPLAINT.

Complaint was amended at hearing to include an additional allegation. Swift & Co. *v.* Erie R. R. Co. 554.

ANALOGOUS ARTICLES.

In the absence of specific rules in the exceptions, nut punchings were entitled to the same rating as iron pebbles, under the analogous article rule. Chicago Portland Cement Co. *v.* I. C. R. R. Co. 477 (478).

ANY-QUANTITY RATES.

Contended that as a general rule a commodity should be rated lower in carloads than in less than carloads. Commission has approved the application of any-quantity rates on traffic moving by freight in the absence of a showing that the demands of the public would not be adequately served unless carloads rates were established. Kimberly Clark Co. *v.* American Exp. Co. 7.

APPEARANCES.

Defendants were not represented at the hearing. Shafer Lumber Co. *v.* St. L., I. M. & S. Ry. Co. 71 (72).

APPENDIX.

No. 1. Percentage basis for each commodity. C. F. A. Class Scale Case, 254 (288).

No. 2. Comparison of various mileage scales. *Id.* (290).

No. 3. Distance rates based on classes 1 to 6 in trunk line, C. F. A., and New England territories. *Id.* (293).

No. 4. Present C. F. A. scale and its illogical characteristics. *Id.* (294).

No. 5. Proposed C. F. A. scale for zone A. *Id.* (295).

No. 6. Proposed C. F. A. scale for zone B. *Id.* (296).

No. 7. Proposed C. F. A. scale for zone C. *Id.* (297).

No. 8. Statement showing percentage relationship of various classes to sixth class in proposed C. F. A. scale (except from zones B and C, Michigan). *Id.* (298).

No. 9. Commission's zone A scale. *Id.* (299).

No. 10. Commission's zone B scale. *Id.* (301).

Nos. 11, 12, and 13. Maps showing Junction and Terminal points and percentage territory in C. F. A. territory. *Id.* (Following page 302.)

APPENDIX—Continued.

- Table No. 1. Iron and steel prices, Dun's Review. Fifteen Per Cent Case, 302 (337).
- Table No. 2. Dun's index number of metal prices. Id. (338).
- Table No. 3. Statement showing cost of freight cars in 1917 as compared with prices in 1916 or prior thereto. Id. (338).
- Table No. 4. Statement showing prices paid for locomotives in 1917 as compared with 1916 or prior thereto. Id. (339).
- Table No. 5. Comparison of fuel prices per ton, 1916-1917. Id. (339).
- Table No. 6. Dun's index number of prices. Id. (340).
- Table No. 7. Dun's index number of miscellaneous prices. Id. (341).
- Table No. 8. United States—Class I carriers by railway. Average operating revenue per mile of road. Id. (342).
- Table No. 9. Eastern District—Class I carriers by railway. Average operating revenue per mile of road. Id. (344).
- Table No. 10. Southern District—Class I carriers by railway. Average operating revenue per mile of road. Id. (345).
- Table No. 11. Western District—Class I carriers by railway. Average operating revenue per mile of road. Id. (346).
- Table No. 12. Comparison of tons of revenue freight originating on the lines of carriers having operating revenues in excess of \$100,000 per annum during the year ended June 30, 1916, with those for the year ended June 30, 1913, the best prior year with respect to amounts of freight carried. Id. (346).
- Table No. 13. Ratio of operating expenses to operating revenues. Id. (347).
- Table No. 14. Comparison of increase in property investment and traffic. Id. (348).
- Table No. 15. Ratio of net operating income to property investment. Id. (349).
- Table No. 16. Ratio of total operating revenue to property investment. Id. (349).
- Table No. 17. Ratio of groups of operating expenses to operating revenues. Id. (350).
- Table No. 18. Ratio of maintenance of way and structures, equipment; other operating expenses to operating revenues. Id. (351).
- Table No. 19. Passenger traffic and revenue per unit. Id. (352).
- Table No. 20. Ratio of taxes to operating revenues. Id. (353).
- Table No. 21. Ratio of taxes to property investment. Id. (353).
- Table No. 22. Summary of operating revenues and expenses per mile of road operated from July, 1916, to April, 1917. Id. (354-355).

ASSIGNMENT.

- Complainant received from the consignee an assignment of its interest in the recovery of reparation. *Austin Powder Co. v. W. & L. E. R. R. Co.* 199.
- Claim for reparation assigned to a bank. Statute empowers the Commission to award reparation to the party injured by any violation of the act committed by carriers. The fact that complainant may have assigned any part of the award is not a matter of which the Commission may take cognizance. *Graustein v. B. & M. R. R.* 393 (405).

BACK HAUL.

- On mixed carload of oranges and lemons from Lordsburg, Cal., consigned to Portland, Oreg., and reconsigned until it reached Everett, Wash., local rate charged for back haul movement from Roseburg to Medford, Oreg., found to have exceeded rate legally applicable. Reparation awarded. *Randolph Fruit Co. v. S. P. Co.* 65 (66).

"BACK" TRACKS.

"Back" tracks are used exclusively for holding loaded cars until ordered placed on the team tracks by consignees. *New York & New Jersey Produce Co. v. N. Y. C. R. R. Co.* 203.

BASING POINTS.

In C. F. A. territory when the rates to two near-by basing points are the same the points between them take the same rates as the basing points. *C. F. A. Class Scale Case*, 254 (265).

BASIS OF RATES.

A basis which imposes comparatively high rates for short distances and comparatively low rates for long distances can not be sustained on the ground that the business had developed thereunder and has become adjusted thereto. *Milk and Cream Rates to New York City*, 412 (429).

Fares from the Missouri River points to San Francisco are the bases for the construction of fares from points beyond the Missouri River. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 436 (440).

BILL OF LADING.

A notation was placed on bill of lading by complainant, that agent at destination should notify consignor by wire if shipment was not promptly delivered. *Held*, Notation not a part of the uniform bill of lading and agent under no obligation to give such notice. *Famechon Co. v. C., B. & Q. R. R. Co.* 598 (600).

BILLING AND REBILLING.

After shipments moved effort was made to have new bills of lading issued, but complainant could not by rebilling the shipments have rendered the intrastate rate applicable. *Waverly Oil Works Co. v. P. R. R. Co.* 216.

BLOCK RATES.

Proposed new system of class and commodity rates in C. F. A. territory, divided into blocks or zones, found not justified. Modifications suggested. *C. F. A. Class Scale Case*, 254 (285, 286).

Rates on milk and cream to New York City based on blocks of 10 miles, prescribed. *Milk and Cream Rates to New York City*, 412 (429, 430).

BOAT LINES.

Defendant's arrangements for the use of river warehouse and incline in the transfer of l. c. l. traffic from boats at Burnside, Ky., subjects complainant to an undue prejudice and disadvantage. *Cumberland Transportation Co. v. C., N. O. & T. P. Ry. Co.* 444 (446).

The petitioner having filed tariffs correcting objectionable practices enumerated in original report, *Held*, the existing service of the Southern Pacific Company-Atlantic steamship lines between New York and New Orleans and between New York and Galveston is in the interest of the public and of advantage to the convenience and commerce of the people. *S. P. Co.'s Ownership of Atlantic S. S. Lines*, 505.

BOOKKEEPING. See DIVISIONS.**BOTH DIRECTIONS.**

Class rate on whisky from Fort Smith, Ark., to St. Louis, Mo., not shown to have been unreasonable as compared with lower commodity rate applicable in opposite direction. *Fern Glen Distilling Co. v. St. L. & S. F. R. R. Co.* 101.

A rate in one direction in excess of the rates between the same points in the opposite direction does not demonstrate the unreasonableness of the higher rate, especially where it is a class rate and the movement is not of sufficient volume to warrant the establishment of a commodity rate. *Id.* (102).

BOTH DIRECTIONS—Continued.

Class rate on sisal fiber from St. Paul, Minn., to Chicago, Ill., found unreasonable to extent it exceeded commodity rate applicable in opposite direction, which commodity rate was subsequently established in either direction. *International Harvester Co. of N. J. v. C. & N. W. Ry. Co.* 105 (106).

Class rates and generally commodity rates from St. Paul to Chicago are the same as those applying in the opposite direction. *Id.* 105.

Rate on steel rails from St. Francis, Ark., to Memphis, Tenn., found unreasonable to extent it exceeded the rate applicable in the opposite direction, which rate was subsequently established over direction of movement. *Reparation awarded. Zelnicker Supply Co. v. St. L. S. W. Ry. Co.* 185 (186).

BRIDGE TOLL.

On shipments of fire clay from High Hill, Mo., to Ottawa, Ill., the Wabash absorbs a bridge toll of 20 cents at St. Louis and 25 cents at Hannibal. *Chicago Retort & Fire Brick Co. v. Wabash Ry. Co.* 61.

BRIDGES.

Defendants assert that in applying the Wisconsin distance basis to Winona they are doing more than could reasonably be expected of them, pointing out fact that the haul to Winona from Wisconsin necessitates the use of a bridge over the Mississippi River. Cases cited wherein the Commission has given weight to similar factors. *Interstate Packing Co. v. C., M. & St. P. Ry. Co.* 365 (368).

BULKY ARTICLES.

Charges collected on an iron tank from Shannondale, Mo., to Rantoul, Kans., too long to be loaded in standard box car, on basis of minimum weight of 5,000 pounds, found unreasonable to extent minimum exceeded 4,000 pounds. *Reparation awarded. Prairie Oil & Gas Co. v. W. Ry. Co.* 1.

CABLE LINES.

There are 17 cable lines between the United States and Europe in the Atlantic Ocean. Eight of them leased and operated by the Western Union, five owned and operated by the Commercial Cable Co., two by the German Cable Co., and two by the French Cable Co. *Commercial Cable Co. v. W. U. T. Co.* 33 (34).

CABLE MESSAGES. See MESSAGES.**CANADA.**

Through rate on staves from Womble, Ark., to Toronto, Canada, found unlawful to extent it exceeded the aggregate of intermediate rates to and from Thebes, Ill. *Reparation awarded. Hollingshead & Blei Co. v. St. L., I. M. & S. Ry. Co.* 153 (154).

Charges on tenpins from Big Bay, Mich., to Boston, Mass., shipped over route through Canada, not shown unreasonable where lower rate applied over route wholly in the United States. *Brunswick-Balke-Collender Co. v. M., M. & S. E. Ry. Co.* 175 (176).

Combination of local rates charged on lumber from New Brunswick, Can., to Hoosick Falls, N. H., milled at Long Pond, Me., which was not reshipped from the milling point within the 10-day period, not found unreasonable. *Burritt Co. v. C. P. Ry. Co.* 195 (196).

On shipments from Canada the Commission's jurisdiction extends over that part of the transportation performed within the United States. *Booth Fisheries Co. v. American Exp. Co.* 363.

CANCELLATION.

Cancellation of through routes and joint rates between points on the S., P. & S. Ry. and the U. P. R. R., via Portland, Oreg., which deprived originating carrier of line haul, found justified. *West Coast Lumber Mfrs. Asso. v. S., P. & S. Ry. Co.* 230 (235).

CANCELLATION—Continued.

Proposed cancellation of joint rates on bituminous coal from the Oak Hills, Colo., district to points on the C., R. I. & P. Ry. in Kansas, Nebraska, and Missouri, leaving in effect higher combination rates, found not justified. Oak Hills, Colo., Coal, 455 (460).

CAPACITY.

Larger tank car furnished than ordered and charges assessed on capacity of larger car. *Held*, Every consideration of economy, if not of safety, demands the movement of tank cars under full loading. Charges not shown unreasonable. Lange Soap Co. v. G., H. & S. A. Ry. Co. 542 (544).

CAR-FOOT MILEAGE.

Is the number of square feet in the cars multiplied by the mileage which each car made. Milk and Cream Rates to Philadelphia, Pa., 371 (382).

CAR FURNISHING.

Shipment of 38,000 pounds of lumber moved from Maytown, Wash., to Rocky Ford, Colo., in a 60,000-pound capacity car. The order blank specified "any" kind of car, and across the face of order appeared, "This to be a very small car." *Held*, The car furnished was in reasonable compliance with the indefinite terms of the order. Miller Saw Mill Co. v. C., M. & St. P. Ry. Co. 221 (222).

Boston & Maine and the Rutland railroads unduly prejudiced complainant and unduly preferred her competitors in furnishing milk cars for shipments to Boston in violation of section 3 of the act, and that the B. & M. failed to furnish proper cars upon reasonable request in violation of section 1 of the act. Graustein v. B. & M. R. R. 393 (403).

Where larger tank car was furnished than was ordered, charges were assessed on capacity of larger car. *Held*, Every consideration of economy, if not of safety, demands the movement of tank cars under full loading. Charges not shown unreasonable. Lange Soap Co. v. G., H. & S. A. Ry. Co. 542 (544).

On a shipment of posts from Boy River, Minn., to Arnegard, N. Dak., larger car furnished than ordered and charges assessed thereon, resulting in overcharge. Reparation awarded. Page & Hill Co. v. G. N. Ry. Co. 547 (548).

CAR-MILE EARNINGS. See also EARNINGS.

On brooms from Wichita, Kans., to Sioux City, Iowa, are relatively low, as the traffic loads very light. Wichita Traffic Bureau v. A., T. & S. F. Ry. Co. 143 (144).

Car-mile earnings on wood-pulp packing cases, from Milwaukee, Wis., to Oregon, Ill., shown. Kieckhefer Box Co. v. C., M. & St. P. Ry. Co. 205 (206).

Baskets: Car-mile earnings on fruit and vegetable baskets from Grand Tower, Ill., to St. Louis, Mo., shown. Merchants Basket & Box Co. v. I. C. R. R. Co. 485 (486).

CAR PEDDLING.

The view that the use by a shipper of a car on the carrier's tracks at destination as a place for peddling or vending to the public the carload shipment arriving therein, is a service of transportation has no sanction at common law or in the act to regulate commerce; and the mere toleration by certain carriers through a period of years of such a use of their property affords no basis for a ruling that the practice has grown into a shipper's right and a carrier's duty. The Car Peddling Case, 494 (500).

Tariffs are not the proper place for rules prohibiting this practice; on the other hand the privilege, if accorded to shippers, seems to be lawful only when provided for in the carriers' tariffs. *Id.* (502).

CAR SIZE.

Tariff governing refrigeration charges on peaches provided minimum loads based on length of car. *Held*, Dimensions specified refer to the outside measurements. *Markley & Co. v. C., N. O. & T. P. Ry. Co.* 559 (560).

CAR SUPPLY.

Traffic having been adequately handled it is not shown that the car supply was inadequate or service insufficient because the through routes involved were canceled. *West Coast Lumber Mfrs. Assn. v. S., P. & S. Ry. Co.* 230 (235).

CARLOAD AND LESS-THAN-CARLOAD.

Contended that as a general rule a commodity should be rated lower in carloads than in less-than-carloads. Commission has approved the application of any quantity rates on traffic moving by freight in the absence of a showing that the demands of the public would not be adequately served unless carload rates were established. *Kimberly Clark Co. v. American Exp. Co.* 7.

Rates on l. c. l. shipments of steel rolling doors and parts from Columbus, Ohio, to Port Arthur and Texas City, Tex., not found unreasonable because of lower rate via New Orleans. *Kinnear Mfg. Co. v. P., C., C. & St. L. Ry. Co.* 74 (75).

On l. c. l. shipment of potatoes from Seeley Creek, N. Y., to Arch Creek, Fla., held that application of a fourth-class rating in less-than-carloads as compared with sixth-class rating in carloads appears to be reasonable adjustment. *Wilcox v. Erie R. R. Co.* 149 (150).

Charges on cast-iron service boxes from Chattanooga, Tenn., to Jacksonville, Fla., on basis of carload rate and minimum not shown unreasonable or otherwise in violation of the act. It does not appear that complainant complied with rule governing the marking of each piece of less-than-carload freight, or that shipment was to be forwarded at the less-than-carload rate and actual weight. *Columbia Iron Works v. S. Ry. Co.* 173 (174).

Rates for the transportation of carload shipments of milk should not exceed 87½ per cent of those herein prescribed for less-than-carload shipments. *Milk and Cream Rates to Philadelphia, Pa.*, 371 (388, 391). *Milk and Cream Rates to New York City*, 412 (428).

Milk and cream are naturally less-than-carload commodities, as the can is the unit of shipment. *Id.* (428).

CARS. *See also Private Cars.*

By recent act of Congress the Commission has been given jurisdiction over the movement, distribution, exchange, interchange, and return of freight cars. *The Fifteen Per Cent Case*, 303 (323).

Statement showing cost of freight cars in 1917 as compared with prices in 1916 or prior thereto. *Id.* (338).

Cars assigned to the milk business. *Milk and Cream Rates to Philadelphia, Pa.*, 371 (377).

Average cost of freight car and car used in milk service. *Id.* (382).

Average weight of cars used in the milk service is much less than the average weight of cars used in passenger-train service. *Id.* (383).

Car furnished complainant for shipment of milk was originally a baggage car, but had been converted into a tool car and then into a milk car. It was single boarded but not insulated, contained six windows, which were boarded up with three-quarter-inch boards, with openings $\frac{3}{4}$ of an inch wide. *Graustein v. B. & M. R. R.* 393 (402).

C. F. A. CITIES RATE READJUSTMENT COMMITTEE.

Temporary organization formed for the purpose of this case. *C. F. A. Class Scale Case*, 254 (275).

"CHANNEL."

In time of congestion at Baltimore terminals a "channel" was opened through which grain shipments consigned to certain vessels could pass in spite of the congestion. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (49).

CHARACTERISTICS OF COMMODITY.

Corn: Contains more moisture than any other grain; the less moisture it contains the better its quality. Necessary precautions on export shipments shown. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (52).

CHICAGO-NEW YORK RATES.

Understood to have been originally made with some regard for water competition on the Erie Canal and the great lakes. *C. F. A. Class Scale Case*, 254 (276).

CIRCUITOUS ROUTES.

Rates on fire clay from High Hill, Mo., to Ottawa, Ill., via Wabash and connections, not found unreasonable as compared with lower rates via Chicago & Alton from points nearby High Hill to Ottawa, it being contended that routes in effect via Wabash are circuitous and that the Wabash did not care to meet the competition of the C. & A., the direct line. *Chicago Retort & Fire Brick Co. v. Wabash Ry. Co.* 61 (62).

Shipment of club turned hickory spokes from Delhi, La., to Memphis, Tenn., moved via certain lines forming circuitous route. Between the same points there was a more direct route carrying a lower rate on hickory lumber. *Held*, That via direct route a rate should be established on club-turned hickory spokes not to exceed that on hickory lumber. Reparation awarded. *Memphis Freight Bureau v. A. & V. Ry. Co.* 121 (122).

Combination rate on new steel rails from East St. Louis, Ill., to Manitowoc, Wis., via circuitous route, not found unreasonable as compared with joint rate over direct route. *Zelnicker Supply Co. v. S. Ry. Co.* 225 (226).

Where circuitous lines desire to meet the rates based upon the distances from competitive points over the direct routes, and to maintain higher rates from intermediate points, applications for relief from the provisions of the fourth section of the act should be filed. *Milk and Cream Rates to New York City*, 412 (431).

CIRCUMSTANCES AND CONDITIONS.

Existence of friendly relations in one instance and their apparent absence in the other can not be accepted as such a difference in conditions as to justify a difference in charges which otherwise would be condemned as unlawful. *Commercial Cable Co. v. W. U. T. Co.* 33 (38).

Circumstances and conditions surrounding the transportation of milk from points on the Maine Central and on the Boston & Maine, on the one hand, and from points on the Rutland, on the other, were not in all respects similar. Rates from points on the Rutland should not have been higher than the differences in circumstances and conditions justified. *Graustein v. B. & M. R. R.* 393 (396).

CIVIL WAR.

Before the civil war the legislature of the state of Ohio enacted a statute which provided that for rail hauls of 30 miles or more within the state the rate for the transportation of property should not exceed 5 cents per ton per mile. *C. F. A. Class Scale Case*, 254 (257).

CLAIMS. See Informal Complaint.**CLASS AND COMMODITY RATES.**

Commodity rates on certain carload shipments of dressed poultry, butter, and eggs from interior Iowa points to Chicago, Ill., found unreasonable to extent they exceeded class rates prescribed in *Cedar Rapids Commercial Club v. C., R. I. & P. Ry. Co.* 28 I. C. C., 76, and 29 I. C. C., 539. *Swift & Co. v. B. & O. R. R. Co.* 8 (10).

CLASS AND COMMODITY RATES—Continued.

Assessment of commodity rate on shipments of artichokes from Tobin and Vallemar, Cal., to San Francisco, Cal., destined to eastern points, illegal, as tariff contained alternative provision whereby lower class rate was applicable. *Russi & Co. v. O. S. R. R. Co.* 77 (78).

Class rate on whisky from Fort Smith, Ark., to St. Louis, Mo., not shown to have been unreasonable as compared with lower commodity rate applicable in opposite direction. *Fern Glen Distilling Co. v. St. L. & S. F. R. R. Co.* 101.

Commodity rate on brewers' dried grain from Chicago, Ill., to Lake Geneva, Kewaunee, Elkhorn, and Springfield, Wis., not found unreasonable as compared with class E rate contemporaneously in effect. *Rankin & Co. v. C., M. & St. P. Ry. Co.* 132 (134).

Authority to continue commodity rates on cottonseed oil from Hillsboro and Decatur, Ala., to Ivorydale, Ohio, lower than class rates from intermediate points, denied. *Proctor & Gamble Co. v. S. Ry. Co.* 177 (178).

Combination class rates on hoisting machines from Yonkers, N. Y., to Salt Lake City, Utah, based on Chicago, illegal to extent they exceeded fifth-class rate to Mississippi River and commodity rate beyond. Reparation awarded. *Otis Elevator Co. v. N. Y. C. R. R. Co.* 201 (202).

Sixth-class rate on wood-pulp board packing cases, k. d., flat, from Milwaukee, Wis., to Oregon, Ill., found unreasonable to the extent that it exceeded the subsequently established commodity rate. Reparation awarded. *Kieckhefer Box Co. v. C., M. & St. P. Ry. Co.* 205 (206).

Joint fifth-class rate on gasoline from Corsicana, Tex., to Gillet, Wis., via Chicago, Ill., found unreasonable to the extent it exceeded combination commodity rate. Subsequently the class rate was canceled leaving in effect the combination rate. Reparation awarded. *Union Petroleum Co. v. T. & B. V. Ry. Co.* 213 (214).

Fifth-class rate on building granite from Hardwick, Vt., to Warren, Ohio, was assessed during period of suspension. Lower commodity rate was legally applicable. Reparation awarded. *Woodbury Granite Co. v. St. J. & L. C. R. R. Co.* 214 (215).

Class rate found unreasonable to extent it exceeded the subsequently established commodity rate. *Best-Clymer Mfg. Co. v. A. C. R. R. Co.* 220.

Proposed new system of class and commodity rates in C. F. A. territory found not justified. Modifications suggested. *C. F. A. Class Scale Case*, 254 (285, 286).

A general increase in class rates, which preserves existing relationships, distributes itself more generally and more equitably than would general increases on commodity rates. *The Fifteen Per Cent Case*, 303 (324).

Sixth-class rate on limestone from Keeport, Ind., to Paulding, Ohio, found unreasonable to the extent it exceeded commodity rate herein found reasonable. Reparation awarded. *German American Sugar Co. v. C. N. R. R. Co.* 475 (476).

Sixth-class rate on slag and refuse from Chester, Pa., to Carneys Point, N. J., found unreasonable. Reasonable commodity rate prescribed. Reparation awarded. *Du Pont de Nemours Powder Co. v. P., B. & W. R. R. Co.* 479 (480).

Joint fifth-class rate on sulphate of alumina from Wyandotte, Mich., to Powell River, British Columbia, found unreasonable to extent it exceeded commodity rate formerly in effect. Reparation awarded. *Powell River Co. v. M. C. R. R. Co.* 482 (483).

Fifth-class rate on cottonseed oil from Fort Wayne, Ind., to Ivorydale, Ohio, not found unreasonable as compared with a commodity rate from Chicago, Ill., and Milwaukee, Wis., that was equal to the sixth-class rate from those points. *Rub-No-More Co. v. C., H. & D. Ry. Co.* 484 (485).

CLASS AND COMMODITY RATES—Continued.

Third-class rate on fruit and vegetable baskets from Grand Tower, Ill., to St. Louis, Mo., not shown unreasonable or unduly prejudicial as compared with commodity rates from Metropolis, Ill. *Merchants Basket & Box Co. v. I. C. R. R. Co.* 485 (486).

From Toledo, Ohio, to points in lower peninsula of Michigan commodity rates on petroleum not higher than 90 per cent of the fifth-class rates, and on drain tile not higher than 85 per cent of the sixth-class rates, found reasonable. Reparation denied on shipments made under rates assailed. *Traffic Bureau of Toledo Commerce Club v. A. A. R. R. Co.* 527 (528).

Any-quantity commodity rate of 20 cents per crate on onions from Savannah, Ga., to New York, N. Y., not shown unreasonable as compared with sixth-class rate. *Hopkins v. Ocean S. S. Co. of Savannah*, 568 (570).

CLASS RATES.

Class rates in C. F. A. territory, with the exception of those to and from most Michigan points, are founded upon a distance scale. *C. F. A. Class Scale Case*, 254 (257).

Class rates from Toledo, Ohio, to points in the lower peninsula of Michigan, assailed. The scales of reasonable rates prescribed in *C. F. A. Class Scale Case*, 45 I. C. C., 254, disposes of the question of class rates in the territory involved. *Traffic Bureau of Toledo Commerce Club v. A. A. R. R. Co.* 527 (528).

Combination class rates on emigrant outfit and portable track and other miscellaneous articles, from Winslow, Ariz., to Acme, Cal., not shown unreasonable. *Acme Cement Plaster Co. v. A., T. & S. F. Ry. Co.* 551 (553).

CLASSIFICATION.

Aeroscope: Portions of shipments of amusement device known as "aeroscope," held not included in tariff provision applying to bridge and structural iron. *Federal Bridge Co. v. A., T. & S. F. Ry. Co.* 537 (538).

Boxes, made-up wooden: Rated fourth class when nested and rule 26 when not nested in C. A. F. territory. *C. F. A. Class Scale Case*, 254 (283).

Coca-Cola: Increased rating on Coca Cola sirup in western classification from fourth class to second class, in l. c. l. shipments in bulk in barrels or kegs, not justified, and a third-class rating prescribed. On shipments made in other containers, the increased rating found justified. *Coca-Cola Co. v. A., T. & S. F. Ry. Co.* 461 (464).

Cook shack and contents: Shipped from Collinsville, Tex., to Frederick, Okla., were properly classified as "portable house" and "household goods, value not stated" and rating of one and one-half times first class properly applicable. *Bowling v. M., K. & T. Ry. Co. of Texas*, 473 (474).

Cotton fabric: First-class rate charged on asphaltum-coated cotton fabrics from Selma, Ala., to East Point, Ga., found unreasonable to extent it exceeded third-class rate subsequently established. Reparation awarded. *Valley Creek Cotton Mills Co. v. W. Ry. of Ala.* 123 (124).

Culverts: Fourth-class rate on culverts, set up, from Portland, Oreg., to Rigby, Idaho, not shown illegal or unreasonable as compared with fifth-class rate applicable on culverts, k. d. *Portland Traffic & Transportation Asso. v. O.-W. R. R. & N. Co.* 410 (411).

Excelsior and excelsior pads: Ratings in Western, Southern, and Official classification territories, shown. *Marinette-Green Bay Mfg. Co. v. I. C. R. R. Co.* 507 (508).

Laundry: First-class, pound rates, in the official express classification not shown to be unreasonable or unjustly discriminatory compared with second-class, pound rate, applying on bread. *Laundrymen's National Asso. of America v. Adams Express Co.* 361 (362).

CLASSIFICATION—Continued.

Meat: In official classification territory fresh meat in carload is and long has been subject to the rates and ratings of the individual carriers, and they usually make rates thereon on basis of the third-class rates, or lower. *Swift & Co. v. B. & M. R. R.* 119 (120).

Motorcycles: Rates on motorcycles in western classification territory found unreasonable to the extent that they exceeded one and one-half times the first-class rates. Reparation awarded. *Browning Bros. Co. v. B. & A. R. R. Co.* 63 (64).

Nut punchings: Rate on nut punchings from Allegheny, Pa., to Oglesby, Ill., found illegal. Under the analogous article rule held entitled to sixth-class rate applying to iron pebbles. Reparation awarded. *Chicago Portland Cement Co. v. I. C. R. R. Co.* 477 (478).

Portable track: Rates assessed on, and other miscellaneous articles from Winslow, Ariz., to Acme, Cal., at fifth-class rate on portable track and various ratings on the other articles, found unreasonable to extent they exceeded class A rate applicable to "graders" and contractors' outfits." Reparation awarded. *Acme Cement Plaster Co. v. A., T. & S. F. Ry. Co.* 551 (553).

Shoe machinery: First-class rating in western classification on less-than-carload shipments of shoe machinery, k. d., in crates, not shown to be unreasonable or unduly prejudicial. *Champion Shoe Machinery Co. v. C. & A. R. R. Co.* 163 (164).

Tea: Double first-class rate on a carload of tea in bags from Seattle, Wash., to Portland, Oreg., not shown to have been unreasonable as compared with first-class rate on tea in boxes, caddies or chests. *Closset & Devers v. N. P. Ry. Co.* 99 (100).

COCA-COLA.

A third-class rating prescribed on Coca-Cola sirup in western classification on l. c. l. shipments in bulk, in barrels, or kegs. On shipments made in other containers, the increased rating of second class found justified. *Coca-Cola Co. v. A., T. & S. F. Ry. Co.* 461 (464).

The wholesale price of Coca-Cola is \$1.50 per gallon. It weighs 10½ pounds per gallon, and is contended to be, strictly speaking, a flavored sirup, not a flavoring sirup. *Id.* (462).

COMBINATION RATES.

Commodity rates on certain carload and less-than-carload shipments of dressed poultry, butter, and eggs from interior Iowa points and Trenton, Mo., to destinations east of the Indiana-Illinois state line, found unreasonable to extent that the components up to the Mississippi River exceeded the proportional class rates prescribed in *Interior Iowa Cities Cases*, 28 I. C. C., 64 and 29 I. C. C., 536. *Swift & Co. v. B. & O. R. R. Co.* 8 (10).

No joint rate in effect, charges were collected at a combination rate based on point through which shipment did not move, which rate was applicable under rule 5 (b) of Tariff Circular 18-A. Rate charged found unreasonable to extent it exceeded joint rate subsequently established. Reparation awarded. *Empire Cotton Oil Co. v. S. A. L. Ry. Co.* 186 (187).

Rates on cranberries from Atlantic seaboard territory to the southwest are made through Chicago and the various Mississippi River crossings, using St. Louis as the basing point. *Goodner-Malone Co. v. M., O. & G. Ry. Co.* 531 (532).

Rate applicable alleged to be excessive because it is a combination rate, but this fact in and of itself affords no basis for condemning the rate. *Lookout Paint Mfg. Co. v. N. Y. C. R. R. Co.* 539 (540).

COMMERCIAL CONDITIONS.

It is not the function of the Commission to equalize commercial conditions or neutralize geographical advantages by such adjustments in rates as will enable a shipper to compete in markets otherwise closed to him. *Great Western Sand & Gravel Co. v. C., M. & St. P. Ry. Co.* 529 (530).

COMMERCIAL RELATIONSHIPS.

Percentage increases, especially where the percentage is substantial, can not fail to disrupt competitive commercial relationships. *The Fifteen Per Cent Case*, 303 (324).

COMPANY MATERIAL.

St. L., I. M. & S. Ry. Co. issued an embargo against lumber to Cypress, Ill., except material for the use of the C. & E. I. R. R., in order to get benefit of long haul. *Held*, An embargo is an emergency measure adopted where it is physically impossible for carriers to transport or where there is an unusual accumulation of traffic. Reparation awarded on shipment involved. *Powell-Myers Lumber Co. v. St. L., I. M. & S. Ry. Co.* 594 (595).

COMPARATIVE RATES.

Alcohol: Rate on alcohol in tank cars from Agnew, Cal., to Philadelphia, Pa., and other points compared with the rate on wine. *Western Grain & Sugar Products Co. v. B. & O. R. R. Co.* 127 (130).

Barrels: Slack and tight barrels obviously do not compete with each other, and the allegation of discrimination, based merely on a showing that identical minima are maintained on the two commodities, can not be sustained. *Dallas Cooperage & Woodenware Co. v. G., C. & S. F. Ry. Co.* 468 (469).

Bottle stoppers: Rates on glass-bottle stoppers are compared with rates on other glassware. The rates cited consisted merely of references to published tariff and are of little or no value for comparative purposes. *Hamilton v. P. R. R. Co.* 191 (192).

Brewers' dried grain: Rates on brewers' dried grain from Chicago, Ill., to Lake Geneva and other Wisconsin points compared with rates on numerous analogous articles which take class B rates. *Rankin & Co. v. C., M. & St. P. Ry.* 132 (134).

Coca-Cola: Coca-Cola is stated to be a flavored sirup, and request is made for a rating that would differentiate it from flavoring sirups. *Held*, The intrinsic difference in the two kinds of sirup does not justify a difference in their classification rating. *Coca-Cola Co. v. A., T. & S. F. Ry. Co.* 461 (464).

Coca-Cola: Compared with other heavy liquids as to rating, value, and weight per gallon. *Id.* (463).

Cottonseed oil, etc.: Rates on cottonseed oil, soap stock, tank bottoms, and inedible tallow from Arkansas, Louisiana, Missouri, Oklahoma, and Texas, to Ivorydale, St. Bernard, and Cincinnati, Ohio, compared with rates on merchant iron, soap, and canned goods, etc., in reverse direction. *Globe Soap Co. v. A. & S. Ry. Co.* 25 (28).

Crossties: Rate on oak, beech, and maple crossties from Lewisburg and Edwards, Ky., to Bradford Junction, Pa., found unreasonable to the extent it exceeded rate on lumber. Reparation awarded and rate prescribed. *Harmount v. L. & N. R. R. Co.* 162.

Excelsior: Alleged that the rates on excelsior and excelsior pads from Marinette and Green Bay, Wis., to Official and Southern classification territories should not exceed the commodity rates on lumber. *Held*, No showing that lumber and excelsior and excelsior pads come into either transportation or trade competition with each other. *Marinette-Green Bay Mfg. Co. v. I. C. R. R. Co.* 507 (510).

COMPARATIVE RATES—Continued.

Feed, poultry: Rates on poultry feed from Chicago, Ill., to Indianapolis, Ind., and Ohio River crossings found unreasonable compared with rate on live-stock feed. Reparation awarded. *Edwards & Loomis Co. v. P., C., C. & St. L. Ry. Co.* 20 (21).

Hoops: Rate on logs should not be higher than on hoops. *Kundtz Co. v. St. L. & S. F. R. R. Co.* 56 (59).

Laundry: Contention that first-class express rates on laundry are discriminatory as compared with rates on bread not sustained, as there is no competitive relation between the articles. *Laundrymen's National Asso. of America v. Adams Express Co.* 361 (362).

Logs: Rate on logs should not be higher than on hoops; nor do logs compete with wood-pulp board. *Kundtz Co. v. St. L. & S. F. R. R. Co.* 56 (59).

Milk and cream: Cream is ordinarily shipped much longer distances than milk, and it is desirable that cream rates should bear a uniform relation to the rates on milk. Rates on cream should not exceed those on milk by more than 25 per cent. *Milk and Cream Rates to Philadelphia, Pa.* 371 (388, 391).

Milk and cream: Earnings on milk and cream compared with earnings on green vegetables and apples. *Milk and Cream Rates to New York City*, 412 (422).

Milk and cream: Contended that there is no necessary relation between rates on milk and cream. *Held*, Rates on cream, l. c. l., should not exceed the maximum rates on milk herein prescribed by more than 25 per cent. *Id.* (427, 428).

Milk and cream: Upon facts of record Commission would not be justified in prescribing the same rates on skimmed milk as are applicable to milk. *Id.* (432).

Mohair: Rate charged on shipments of mohair and one mixed shipment of wool and mohair from Boston, East Boston, and East Cambridge, Mass., to Nepperhan, N. Y., found unreasonable to extent it exceeded rate contemporaneously applicable on wool. *Smith & Sons Carpet Co. v. B. & A. R. R. Co.* 103 (104).

Molding: Rate on carpenters' molding in carloads and on mixed carloads of molding and lumber from Thomasville, Ga., to West Palm Beach, Fla., found unreasonable to the extent that the portion applicable from Jacksonville to West Palm Beach exceeds rate on lumber. Reparation awarded. *Daugherty, McKey & Co. v. A. C. L. R. R. Co.* 535 (536).

Onions: Any quantity commodity rate of 20 cents per crate on onions from Savannah, Ga., to New York, N. Y., compared with any-quantity rates on various commodities. *Hopkins v. Ocean S. S. Co. of Savannah*, 568 (569).

Orchard heaters: Generally rates on orchard heaters are no higher than the rates on stamped ware. Rate on shipment of heaters from Martins Ferry, Ohio, to Medford, Oreg., found unreasonable to extent it exceeded rate in effect on stamped ware, which rate was subsequently put in effect on heaters. Reparation awarded. *Wheeling Corrugating Co. v. P. Co.* 165 (166).

Ore, iron: Combination rate legally applicable on iron ore from Ontario, N. Y., to Chattanooga, Tenn., not shown unreasonable or unduly prejudicial as compared with joint rate on chrome ore. *Lookout Paint Mfg. Co. v. N. Y. C. R. R. Co.* 539 (541).

Portable track: Fifth-class rate on, and other miscellaneous articles from Winslow, Ariz., to Acme, Cal., found unreasonable to extent it exceeded class A rate applicable on "graders' and contractors' outfits." Reparation awarded. *Acme Cement Plaster Co. v. A., T. & S. F. Ry. Co.* 551 (553).

Salt: Rates on salt from Portland, Oreg., Seattle, and Tacoma Wash., to points in Washington, Idaho, Montana, and Oregon, interstate, compared with rates on plaster, coal, brick, lime, and various other commodities. *The Northwestern Salt Cases*, 12 (18).

COMPARATIVE RATES—Continued.

Shingles, asphalt: Rate on asphalt shingles and mixed carloads of asphalt shingles and prepared roofing, from points in New York, Indiana, and Illinois to various destinations, not found unreasonable as compared with the rate on prepared roofing. *Sall Mountain Co. v. Southern S. S. Co.* 573 (574).

Sisal fiber: Rate on sisal fiber between St. Paul and Chicago compared with the rate on binder twine. *International Harvester Co. of N. J. v. C. & N. W. Ry. Co.* 105.

Slag: Rates on slag from South Bethlehem, Pa., to Philadelphia, Pa., compared with rates on pig iron. *National Slag Co. v. L. V. R. R. Co.* 125 (126).

Slag: Sixth-class rate on basic slag from Locust Point, Baltimore, Md., to Mechanicsburg, Ohio, compared with commodity rates on phosphate rock from Baltimore to various points in Ohio. *Wing Seed Co. v. B. & O. R. R. Co.* 160.

Spokes, club-turned: Rate on club-turned spokes from Delhi, La., to Memphis, Tenn., found unreasonable to the extent it exceeds rate contemporaneously in effect on lumber from the same kind of wood. *Memphis Freight Bureau v. A. & V. Ry. Co.* 121 (122).

Tin can faucets and caps: Fourth-class rate on, from Brooklyn, N. Y., to Richmond, Cal., found unreasonable to extent it exceeded commodity rate on tin can stock. Reparation awarded. *Standard Oil Co. (Cal.) v. A., T. & S. F. Ry. Co.* 557 (558).

COMPETITION.

Articles:

Barrels: Slack and tight barrels obviously do not compete with each other, and the allegation of discrimination, based merely on a showing that identical minima are maintained on the two commodities, can not be sustained. *Dallas Cooperage & Woodenware Co. v. G., C. & S. F. Ry. Co.* 468 (469).

Slag: There is no showing of competition between phosphate rock and basic slag. *Wing Seed Co. v. B. & O. R. R. Co.* 160 (161).

Carrier:

Allegation that defendants have at times suspended operation of embargoes with respect to shipments of grain originating in certain specified territories, especially where competition between carriers exists, while continuing them with respect to grain originating in all other territories, not sustained. Evidence insufficient to establish its unlawfulness. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (53).

Market:

Box manufacturers in C. F. A. territory have to meet competition of manufacturers outside of C. F. A. territory whose rates are not proposed to be increased. *C. F. A. Class Scale Case*, 254 (284).

Where the differences in distance between competitive localities are relatively great a 15 per cent increase would seriously affect competitors in a common market. *The Fifteen Per Cent Case*, 303 (316).

Allegation that rate on gypsum plaster from Nephi, Utah, to Portland, Oreg., is unreasonable, because competitors of Nevada have advantage of a rail and water route, not sustained. *Nephi Plaster & Mfg. Co. v. D. & R. G. R. R. Co.* 433 (434).

It is not the function of the Commission to equalize commercial conditions or neutralize geographical advantages by such adjustments in rates as will enable a shipper to compete in markets otherwise closed to him. *Great Western Sand & Gravel Co. v. C., M. & St. P. Ry. Co.* 529 (530).

Ocean-and-rail and all-rail rates on cranberries from points in Atlantic seaboard territory to Muskogee, Okla., higher than to Fort Smith, Ark., does not affect the price or profit to Muskogee jobbers. *Goodner-Malone Co. v. M., O. & G. Ry. Co.* 531 (534).

COMPETITION—Continued.**Wagon:**

Rates on milk and cream from the first and second zones, not increased when other rates were increased, because of truck and wagon competition. *Milk and Cream Rates to Philadelphia, Pa.*, 371 (379).

Water:

While a carrier, in the exercise of its discretion, may establish rates to meet water competition, it is well settled that it can not be compelled to do so, so long as no unjust discrimination or undue preference is thereby created. Cases cited. *Nephi Plaster & Mfg. Co. v. D. & R. G. R. R. Co.* 433 (434). It is not shown that on lumber from Hosford, Fla., to Pensacola, Fla., for export, that the factor of rate from River Junction, Fla., to Pensacola is affected by water competition. *Graves Bros. Co. v. A. N. R. R. Co.* 470 (472).

COMPRESSION. See also TRANSIT ARRANGEMENTS (COMPRESSION).

Under present conditions of growing and marketing cotton, concentration is a necessity to the shippers, and it can readily be seen that it enables the carriers to transport the crop with the greatest conservation of its equipment, for the l. c. l. movement into the concentration and compression point is short and on the longer haul outbound full carloads are secured. *R. R. Comm. of Ala. v. C. of G. Ry. Co.* 516 (519).

CONCENTRATION. See TRANSIT ARRANGEMENTS (CONCENTRATION).**CONCURRENCE.**

Respondents have not justified their proposed withdrawal from participation in tariffs governing transportation of special passenger and baggage equipment. *Special Passenger Equipment*, 590 (592).

CONGESTION. See DIVERSION OF TRAFFIC; WAR IN EUROPE.**CONGRESS.**

To enable the Commission to prescribe reasonable rates the Congress has delegated to the Commission a quasi legislative or administrative power in the exercise of which there inheres necessarily and admittedly a wide but sound discretion aptly termed the "flexible limit of judgment which belongs to the power to fix rates." *Arlington Heights Fruit Exchange v. S. P. Co.* 248 (250).

CONSIGNOR AND CONSIGNEE.

Shipment was sold f. o. b. destination and the freight charges paid by consignee were deducted from the invoice price in settlement. *Watters-Tonge Lumber Co. v. C., N. O. & T. P. Ry. Co.* 575 (576).

CONSOLIDATED SHIPMENTS.

Practice of granges and other farm organizations of making combination carload shipments consigned to an agent of the grange but consisting of merchandise arranged for or purchased by its members is entirely different than the practice of selling direct from the cars, and no reason appears upon the record for condemning it either as unlawful or discriminatory. *The Car Peddling Case*, 494 (504).

CONSTRUCTIVE MILEAGE.

Philadelphia is about 516 miles from Brunswick, Me., by route of movement allowing 60 miles for constructive mileage in New York harbor. *International Paper Co. v. M. C. R. R. Co.* 30 (32).

CONSUMPTION.

Milk and cream: Daily consumption in New York City is approximately 2,090,000 quarts of milk and 110,000 quarts of cream. About 80 per cent transported in cans and the balance in bottles. *Milk and Cream Rates to New York City*, 412 (417).

CONTAINERS.

Rate on empty beer containers from Gary, Ind., to Chicago, Ill., found to have been unreasonable to extent it exceeded prior and subsequently reestablished rate. Reparation awarded. *U. S. Brewing Co. of Chicago v. M. C. R. R. Co.* 67 (68).

A 40-quart can, dry measure, will hold 46 quarts, liquid measure, *Milk and Cream Rates to Philadelphia, Pa.* 371 (378).

Rate relationship between the rates on shipments of milk and cream in bottles and in cans not shown to be unreasonable. *Milk and Cream Rates to New York City*, 412 (427); *Milk and Cream Rates to Philadelphia, Pa.* 371 (389).

The expense of loading and unloading less than carload shipments of bottled milk is greater than in the case of milk in cans. *Milk and Cream Rates to New York City*, 412 (427).

Certain percentages of the rates found reasonable prescribed for cans of various sizes. *Id.* (431).

The western classification shows that the style of container used is an important factor in determining the rating of liquids. Third-class rating prescribed on Coca-Cola in bulk in barrels or kegs, and a second-class rating found justified on shipments made in other containers. *Coca-Cola Co. v. A., T. & S. F. Ry. Co.* 461 (463, 464).

CONTRACTS.

Contract between the Western Union Telegraph Co. and the Central & South American Telegraph Co. providing that the two companies would interchange messages with each other at New York to the exclusion of all other companies, has expired but its provisions are still observed. *Commercial Cable Co. v. W. U. T. Co.* 33 (34).

Contract between the Rutland Railroad and Stephen C. Millett with respect to the building and maintenance by him of milk-shipping stations for use of shippers of milk to New York from Vergennes and other stations intermediate to Rutland, and its refusal to give complainant access to them under reasonable terms, or to construct similar buildings for her use on shipments to Boston unduly preferred shippers to New York and unduly prejudiced complainant. *Graustein v. B. & M. R. R.* 393 (404).

If carriers make contracts of the nature of the one involved, they do so under the legal obligation that their practices under them shall not unduly prejudice or unduly prefer any shipper engaged in the same business. *Id.* (404).

Under contract between the Rutland and New York Central and Stephen C. Millett, Millett undertakes to educate farmers to requirements of the New York City board of health; to stimulate milk production by farmers; to erect creameries and milk-receiving stations; to supervise the loading and delivery; ice l. c. l. shipments; to handle claims; and to take general charge of milk traffic. He receives 15 per cent of the gross revenue of the Rutland on milk and cream shipped to Melrose Junction, N. Y., and 12½ per cent from the New York Central on milk and cream received from the Rutland at Chatham. *Milk and Cream Rates to New York City*, 412 (417).

COST OF EQUIPMENT. *See CARS; LOCOMOTIVES.*

COST OF OPERATION. *See REVENUES AND EXPENSES.*

COSTS.

Increased prices of materials and supplies, the increased cost of fuel, and increased wages are all significant and extremely important factors in the situation here considered. *The Fifteen Per Cent Case*, 303 (318).

Statement showing cost of freight cars in 1917 as compared with prices in 1916 or prior thereto. *Id.* (338).

COTTON.

Cotton is an agricultural product which can not be properly prepared for shipment by the grower, this being due to the fact that the machinery necessary for ginning and compression is costly. *R. R. Comm. of Ala. v. C. of G. Ry. Co.* 516 (517).

Cotton is one of the principal agricultural products of the country and it appears impracticable that any substantial portion of it can move through from points of origin to final destination in full carloads of compressed bales. *Id.* (520).

CRATES. See **PACKING.**

CREDIT.

Refusal of defendants to extend credit to complainant on accruing freight bills, while allowing such credit to its competitors, did not, under the circumstances, constitute undue discrimination within the meaning of the act. *Graustein v. B. & M. R. R.* 393 (405).

CUSTOM.

The suggestion that the acquiescence in the practice of selling from the car throughout a substantial period of years, by the carriers in this limited section of the country, gives it the status of a transportation practice and confers upon the Commission the power, under section 15, to require its continuance on the theory that the withdrawal now of the privilege would be unreasonable, has no basis in reason or in authority. *The Car Peddling Case*, 494 (500).

The mere toleration by the carriers through a period of years of the use of their cars and equipment as a salesroom affords no basis for a ruling that the practice has now grown into a shipper's right and a carrier's duty and is a transportation service. *Id.* (500).

DAMAGES.

Section 4: Departures from the provisions of the fourth section, which are covered by appropriate fourth section applications, do not of themselves constitute a basis for an award of reparation. *City of Clarksdale, Miss., v. I. C. R. R. Co.* 108 (110).

Reparation is awardable only for violations of the act. *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.* 209 (210).

Contention that the Commission erred in denying reparation to complainants on the ground that the effect of the Commission's order prescribing reasonable charges on precooled shipments of oranges was to prescribe a complete readjustment in the carriers' charges, not sustained. *Arlington Heights Fruit Exchange v. S. P. Co.* 248 (249-250).

In the power to fix rates for the future, the Commission endeavors to prevent a public wrong; but in finding past rates unreasonable and awarding damages is the remedying of a private injury. *Id.* (250).

Complainant argues that the Commission must, as a matter of course, award reparation when a rate is condemned, while defendant argues that the Commission is without authority to award any damages merely because a rate has been found unreasonable. *Held, Bear Bros. Case*, 233 U. S., 479, responds negatively to these contentions, for the court there held that persons may be entitled to reparation and not to a new rate; or to a new rate and not to reparation. *Id.* (252).

Finding in 39 I. C. C., 88, that reparation be denied on precooled and priced oranges transported from California originating points to destination in other States and in Canada, reaffirmed on reargument. *Id.* (253).

Claim for reparation assigned to a bank. Statute empowers the Commission to award reparation to the party injured by any violation of the act committed by carriers. The fact that complainant may have assigned any part of the award is not a matter of which the Commission may take cognizance. *Graustein v. B. & M. R. R.* 393 (405).

DAMAGES—Continued.

Refund of charges collected on certain shipments, on basis of rate subsequently found reasonable by Commission, made prior to hearing, resulted in undercharges. Reparation authorized on basis of rate found reasonable. *International Paper Co. v. M. C. R. R. Co.* 453 (454).

DEFERRED MESSAGES. See MESSAGES.**DELAY.**

Allegation that the cancellation of through routes on lumber from points on the S., P. & S. Ry., and the requiring of such shipments to move via Spokane, results in serious delays, especially at Billings, Mont., a junction point, not sustained. *Held*, Delays of this nature are not uncommon, and do not afford a basis of holding such routes unsatisfactory. *West Coast Lumber Mfrs. Asso. v. S., P. & S. Ry. Co.* 230 (232).

DELEGATION.

To enable the Commission to prescribe reasonable rates the Congress has delegated to the Commission a quasi legislative or administrative power. *Arlington Heights Fruit Exchange v. S. P. Co.* 248 (250).

DELIVERY. See also DEMURRAGE.

The mere fact that the New York Central has its milk terminals in New York City, that its zones are measured therefrom, and that the rates cover delivery in New York, does not justify a finding that the rates to the New Jersey terminals should include delivery in New York. *Milk and Cream Rates to New York City*, 412 (421).

DEMURRAGE.

Reparation awarded for demurrage charges collected on carload of lumber at Jersey City, N. J., which was erroneously forwarded from Bronx Terminal, N. Y., when delivery was requested to have been made at foot of East Fifth street, New York. *Currie & Campbell v. C. R. R. Co. of N. J.* 3.

Demurrage on potatoes at Thirty-third street station, New York, held on back tracks awaiting placement for unloading, found legally assessed. *New York & New Jersey Produce Co. v. N. Y. C. R. R. Co.* 203 (204).

Demurrage charges have been increased in order to expedite the release of cars. *The Car Peddling Case*, 494 (503).

Demurrage accruing during dispute over carrier's refusal to receive shipment at connecting point, found legally applicable. *Hilgard Lumber Co. v. C. & E. I. R. R. Co.* 513 (515).

Reconsigning instructions, sent by mail to agent at point of origin were not received. Demurrage charges at Indianapolis, Ind., on lumber from Wautubbee, Miss., not shown unreasonable. *Webster v. N. O. & N. E. R. R. Co.* 566 (567).

In the absence of proof that defendants received instructions to reconsign a shipment, they can not be held responsible for failure to deliver the shipment prior to the receipt of disposition orders. Neither are they obligated to release the shipment before payment of demurrage which has lawfully accrued. *Id.* (567).

Carload of hay from Strader, Wis., was refused by consignee at Chicago on account of its bad condition. Reconsignment to St. Louis denied because of a federal embargo on Wisconsin hay. Shipment later sold at Chicago. Demurrage charges found lawfully collected. *Union Hay Co. v. C., St. P., M. & O. Ry. Co.* 597.

Demurrage and track storage charges on refused shipments of potatoes at Kansas City, Mo., shipped from various points in Minnesota, not shown unreasonable because carrier's agent failed to notify consignor of such refusal as requested in bill of lading. *Famechon Co. v. C., B. & Q. R. R. Co.* 598 (600).

DENSITY OF TRAFFIC.

Density of traffic, or number of tons-one-mile per mile of line, for several states in C. F. A. territory, during 1914, shown. C. F. A. Class Scale Case, 254 (273). Table showing traffic density on principal C. F. A. lines. Id. (280).

DEPRECIATION.

Four per cent of the original cost of a locomotive equals the item of depreciation per year. Milk and Cream Rates to Philadelphia, Pa., 371 (382).

DETENTION.

Contended that when a car is held at the shipper's expense the carrier is fully compensated for its use by the shipper for any purpose, including its use as a vending place for its contents. *Held*, This contention is obviously one that requires careful examination before it may be accepted as an established general principle of transportation. The Car Peddling Case, 494 (498-499).

Detention of a car for unloading, reconsigning, reshipping and similar services are strictly transportation functions; and the detention of a car for any such purpose bears not even a remote relation to the detention of a car by a shipper as a salesroom for its contents. Id. (499).

Commission unable to accept the view that the 48 hours of free time, provided under the carriers' tariffs to enable the shipper to unload the car, embraces a right in the shipper to open a public shop in the car during that time, or that its further detention under demurrage, for unloading or for any similar transportation service, subjects the car and the carrier's track and station grounds to use by the shipper as a place of business with the public. Id. (500, 502).

DIFFERENTIALS.

Mining points in the vicinity of Birmingham, Ala., are given the Birmingham rate and are in what is known as nondifferential territory. Other mining points in Alabama take, according to distance, differential rates 5 to 20 cents higher than Birmingham and are in what is known as differential territory. Arlington Cotton Oil Co. v. C. of G. Ry. Co. 188.

It is shown that on strawboard boxes and other articles differentials of from 4 cents to 10 cents prevail in the commodity rates from St. Louis to Oklahoma points over the commodity rates from Kansas City, the average differential being approximately 5 cents. Schram Glass Mfg. Co. v. St. L. & S. F. R. R. Co. 465 (466).

Upon rehearing, differentials proposed by defendants in rates on uncompressed cotton from certain points in Arkansas and Missouri to Memphis and St. Louis approved with certain exceptions. City of Memphis v. C., R. I. & P. Ry. Co. 487 (492).

Tables showing the distances and proposed rates on uncompressed cotton from stations and blocks of stations on lines involved to St. Louis and Memphis. Id. (489).

No explanation on record as to why class-rate differentials, Marinette over Green Bay, should be maintained on traffic for the longer distances to trunk-line territory, when for shorter distances to the C. F. A. territory both cities take the same class rates. Marinette-Green Bay Mfg. Co. v. I. C. R. R. Co. 507 (511).

DISCRIMINATION. See also DIVISIONS; PREFERENCES AND PREJUDICES.

Allegations that complainant was subject to unjust discrimination because of defendants' failure to furnish milk-loading platforms, while furnishing such platforms to its competitors; that charges were based on the capacity of containers, while tariff governing contained no such provision; that competitors were permitted use of cars for storage purposes; also with respect to caretaker's passes, not sustained. Graustein v. B. & M. R. R. 393 (405).

Refusal of defendants to extend credit to complainant on accruing freight bills, while allowing such credit to its competitors, did not, under the circumstances, constitute undue discrimination within the meaning of the act. Id. (405).

DISTANCE RATES. *See also* **BLOCK RATES.**

Proposed new system of class and commodity rates in C. F. A. territory, based on distances, found not justified. Modifications suggested. C. F. A. Class Scale Case, 254 (285, 286).

DISTANCES.

In computing distances in C. F. A. territory the shortest workable route in each case was ordinarily used and the distances thus obtained were employed in arriving at rates for the longer routes between the same points. C. F. A. Class Scale Case, 254 (262).

For commercial and competitive reasons, distance has in the past been largely ignored in making rates to and from Saginaw and Bay City, Mich., but in the proposed adjustment they would be given rates made substantially according to scale. *Id.* (280).

The Wisconsin commission established the same rates to Cudahy as to Milwaukee, and it can not be assumed that the additional distance of 7 miles would necessarily justify different rates, as similar switching distances are not unusual. *Interstate Packing Co. v. C., M. & St. P. Ry. Co.* 365 (369).

DISTURBANCE OF ADJUSTMENT.

Where an old scale of rates is replaced by a new and differently constituted scale, some disturbance of relationships is of course to be expected. C. F. A. Class Scale Case, 254 (256).

No increases being proposed in the rates between points in C. F. A. territory, on the one hand, and between points in eastern trunk line territory, on the other, any increases which are permitted between points within the latter territory will disturb the existing rate relationships. *Id.* (275).

DIVERSION.

Charges legally applicable on shipment of coal from Gatliff, Ky., to Parkersburg, Iowa, diverted in transit to Jesup, Iowa, found to have been unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the through rate, plus a diversion charge of \$2. *Spahn & Rose Lumber Co. v. L. & N. R. R. Co.* 111 (112).

DIVERSION OF TRAFFIC.

Congestion at eastern ports and terminals has led to the diversion of some traffic to Gulf and south Atlantic ports. *The Fifteen Per Cent Case*, 303 (321).

DIVISIONS.

Defendant may adopt such methods of bookkeeping as it deems advisable. Allegation of unjust discrimination can not properly be predicated upon the fact that defendant charges a competing cable company for the service by it a rate or division which is greater in amount than the sum which the defendant arbitrarily credits to itself for performing the same service on messages which it receives from its own cables. *Commercial Cable Co. v. W. U. T. Co.* 33 (37).

Where division received by carrier is contended to be more than that received by other participating carriers, held that divisions of through rates primarily are matters of agreement between participating carriers, and that, while they may be considered as evidence, they are not regarded as conclusive, and ordinarily afford but little basis upon which to determine the reasonableness of joint rates. *Freight Bureau, Chamber of Commerce, Macon, Ga., v. M., D. & S. R. R. Co.* 83 (84).

The comparison of ton-mile earnings under an assumed division of a rate is of little value and does not demonstrate the unreasonableness of the joint rate assailed. *Williston Mill Co. v. G. N. Ry. Co.* 137 (138).

DIVISIONS—Continued.

The fact that coal from the Oak Hills district displaces that from other fields, on which greater revenue is earned, can not control the fixation of reasonable divisions, still it serves as one factor in their determination as indicative of the relative position in which each carrier would be placed and the advantage or disadvantage falling to each if the question were one of bargaining as between themselves. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 236 (237, 244).

Divisions of joint rates on bituminous coal from Oak Hills, Colo., and points taking the same rates, to stations in Kansas, Nebraska, Missouri, and South Dakota on the A., T. & S. F., the M. P., and the C. & N. W. railways, such joint rates having been prescribed in 39 I. C. C., 94, hereby prescribed. *Id.* (240-247).

Cancellation of joint rates can not be justified merely on the ground of inability to agree upon the proper divisions of such rates. *Oak Hills, Colo., Coal*, 455 (460).

DUTY OF CARRIERS.

Carriers clearly within their rights in bringing these matters to the attention of the Commission; their action is an added evidence of the farsightedness and sense of responsibility in the performance of their duties toward the public with which so many of their officials are managing and administering the affairs of their respective properties. *The Fifteen Per Cent Case*, 303 (325).

EARNINGS. *See also* REVENUES and EXPENSES.

In general:

Average revenue per mile of road operated; average operating income per mile of road, and ratio of operating income to average investment, or book cost, for calendar years 1912 to 1916, shown. *The Fifteen Per Cent Case*, 303 (318).

Tables showing the average operating revenue per mile of road for the United States; Eastern, Southern, and Western districts—Class I carriers by railway. *Id.* (342-346).

Barrels: Car and car-mile earnings on slack barrels from Dallas, Tex., to Oklahoma points shown at present minimum weight and at the alleged reasonable minimum. *Dallas Cooperage & Woodenware Co. v. G., C. & S. F. Ry. Co.* 468 (469).

Boxes: Ton-mile and car-mile earnings on strawboard boxes from St. Louis, Mo., to Sapulpa, Okla., and other points, shown. *Schram Glass Mfg. Co. v. St. L. & S. F. R. R. Co.* 465 (466).

Brick: Ton-mile and car-mile earnings on building brick from Buffville, Kans., to Chappell, Nebr., shown. *Sunderland Bros. Co. v. M. P. Ry. Co.* 193 (194).

Coal: Revenue per car-mile and per ton-mile on lump, nut, pea, and slack coal from Oak Hills, Colo., to representative destinations under divisions in effect and divisions prescribed by the Commission, shown. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 236 (240, 242, 245, 246, 247).

Cottonseed: Ton-mile and car-mile earnings on cottonseed from Alachua, Fla., to Quitman, Ga., shown under the rate charged and the present rate. *Empire Cotton Oil Co. v. S. A. L. Ry. Co.* 186 (187).

Ice: Ton-mile and car-mile revenue on ice from Paducah, Ky., to Martin, Tenn., shown. *Paducah Board of Trade v. N., C. & St. L. Ry.* 359 (360).

Kraut: Ton-mile and car-mile earnings on kraut from Austin, Ind., to Cairo, Ill., shown under former and present rate. *Scudders Gale Grocer Co. v. S. Ry.* Co. 181 (182).

Limestone: Ton-mile and car-mile earnings on limestone from Keepport, Ind., to Paulding, Ohio, shown. *German American Sugar Co. v. C. N. R. R. Co.* 475.

EARNINGS—Continued.

- Logs: Ton-mile and car-mile earnings on ash logs from Thurman, N. Y., to Wyoming, Pa., shown. *Wyoming Shovel Works v. D. & H. Co.* 197 (198).
- Milk: Average revenue per car-mile, loaded and empty movement, per ton-mile, including ice and cans, and per gross ton-mile, loaded and empty movement, received on milk and cream traffic for the year ended June 30, 1915, shown. *Milk and Cream Rates to New York City*, 412 (422).
- Pyrites cinder: Car-mile and ton-mile earnings on pyrites cinder from Philadelphia, Pa., to Coatesville, Pa., under the former and the present rates shown. *Harrison Bros. & Co. v. B. & O. R. R. Co.* 85 (86).
- Rubblestone: Ton-mile and car-mile earnings on rubblestone from Granite Quarry, N. C., to Wyndmoor, Pa., shown at the former and at subsequently established rates. *Harris Granite Quarries Co. v. S. Ry Co.* 561.
- Salt: Table showing earnings per car, per car-mile, and per ton-mile on salt from Portland, Oreg., to representative destination points. *The Northwestern Salt Cases*, 12 (14).
- Slag: Ton-mile and car-mile earnings on slag from Chester, Pa., to Carney's Point, N. J., shown. *Du Pont de Nemours Powder Co. v. P., B. & W. R. R. Co.* 479.
- Sorghum cane: Car, car-mile, and ton-mile earnings on sorghum cane from Salisaw, Okla., to South Fort Smith, Ark., shown. *Best-Clymer Mfg. Co. v. A. C. R. R. Co.* 220.

ECONOMIC PROBLEMS.

From the beginning of this proceeding the carriers, the shippers, and the Commission alike have dealt with the essence of the economic problems presented rather than with legal questions. *The Fifteen Per Cent Case*, 303 (317).

ECONOMIC WASTE.

It is an economic waste to haul milk for long distances if it may be secured at shorter distances. *Milk and Cream Rates to New York City*, 412 (423).

ELEVATORS.

Export elevators at Baltimore are all owned by the carriers. Capacities shown. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (44).

EMBARGOES.

"Flat" or "absolute" embargoes described. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (44).

Under transportation conditions which have obtained for many months, and in view of those which the existing state of war necessarily creates, a practice of accepting shipments of grain in bulk for export only upon satisfactory evidence that arrangements for its immediate exportation have been made, is not inherently unreasonable or unlawful, but, the practice as applied to shipments to Baltimore for export does not accomplish the results desired, and unduly prefers the persons to whom permits are issued, because the use made of the permits is not adequately policed and safeguarded. *Id.* (51).

The act does not inhibit the declaration of an embargo by a carrier, and the advisability or the necessity of declaring embargoes is a matter of policy to be determined in the first instance by the carrier. *Id.* (53).

Commission's jurisdiction is limited to determining the lawfulness of the practices of embargoes and to requiring after full hearing the establishment and maintenance of such regulations or practices as may be found to be just, fair, and reasonable. *Id.* (53).

Owing to embargo shipments could not move direct, so they were consigned to agent of connecting line at Homestead, Pa., to be forwarded to New York for export. After shipments moved effort was made to have new bills of lading issued, but complainant could not by rebilling the shipments have rendered the intrastate rate applicable. *Waverly Oil Works Co. v. P. R. R. Co.* 216.

EMBARGOES—Continued.

Shipment of lumber refused at Moark, Ark., for transportation to Cypress, Ill., as carrier had issued an embargo in order to get benefit of long haul. Shipment moved to Dupo, Ill., reconsigned to Danville, Ill. *Held*, An embargo is an emergency measure adopted where it is physically impossible for carriers to transport or where there is an unusual accumulation of traffic. It was the duty of carrier to accept and forward shipment as requested. Reparation awarded. *Powell-Myers Lumber Co. v. St. L., I. M. & S. Ry. Co.* 594 (596).

Carriers may not, under the guise of an embargo, attempt to accomplish results which the law requires shall be effected only by means of published tariffs. *Id.* (596).

Carload of hay from Strader, Wis., was refused by consignee at Chicago on account of its bad condition. Reconsignment to St. Louis denied because of a federal embargo on Wisconsin hay. Shipment later sold at Chicago. Demurrage charges found lawfully collected. *Union Hay Co. v. C., St. P., M. & O. Ry. Co.* (597).

Federal embargoes are declared in the interest of the general public and must be observed. By observing them the carrier incurs no liability to the shipper whose goods are embargoed. *Id.* (597).

EMPTY CARS.

The hauling of empty cars is expensive and productive of no revenue. The Fifteen Per Cent Case, 303 (324).

EMPTY CONTAINERS. See also CONTAINERS.

There is no return movement of empty carriers of laundry, it being returned in the same carriers in which it was originally shipped. *Laundrymen's National Assn. of America v. Adams Exp. Co.* 361 (362).

EQUALIZING CONDITIONS.

It is not the function of the Commission to equalize commercial conditions or neutralize geographical advantages by such adjustments in rates as will enable a shipper to compete in markets otherwise closed to him. *Great Western Sand & Gravel Co. v. C., M. & St. P. Ry. Co.* 529 (530).

EQUIPMENT. See also CARS; LOCOMOTIVES.

The use of a carrier's equipment and property as a salesroom, while undoubtedly a commercial convenience to the shipper, lies entirely outside the service and duty a railroad owes the shipper as a common carrier and is in no sense a common-carrier service. *The Car Peddling Case*, 494 (499).

Benefits derived from car peddling are more or less incidental and local and can have but little weight when compared with the important economic necessity of keeping the car equipment of the carriers as active and free as possible. *Id.* (503).

ERROR.

Reparation awarded for misrouting and demurrage charges collected on shipment of lumber from Bronx Terminal, N. Y., which was erroneously floated to Jersey City, N. J., when request was made to deliver at foot of East Fifth Street, New York. *Currie & Campbell v. C. R. R. Co. of N. J.* 3.

Through oversight rate on dried fruit from San Francisco, Cal., to Minneapolis and St. Paul, Minn., was not made applicable to Aberdeen, S. Dak. Reparation awarded on shipment involved on basis of rate which should have applied and which was subsequently established. *Aberdeen Wholesale Grocery Co. v. C., M. & St. P. Ry. Co.* 23.

The proof of error in the publication of rates does not justify a departure from the published rates. *Russi & Co. v. O. S. R. R. Co.* 77 (78).

ERROR—Continued.

It is not shown that defendants were advised that an error had been made in the billing by complainant's clerk in ordering l. c. l. shipment to be forwarded as carload shipment. Such a presumption is rebutted by the fact that a 40-foot car was ordered. *Columbian Iron Works v. S. Ry. Co.* 173 (174).

Rate on kraut from Austin, Ind., to Cairo, Ill., found unreasonable as lower rate, applicable over other route, through oversight had not been published in connection with the St. L., I. M. & S. Ry. Co. Lower rate subsequently established. Reparation awarded. *Scudders Gale Grocer Co. v. S. Ry. Co.* 181 (182).

Additional routing instructions appearing on the bill of lading were erroneously inserted by carrier's billing clerk. Carload of bituminous coal from Harrisburg, Ill., to Millbank, S. Dak., found to have been misrouted. Reparation awarded. *Rawson v. C., C. & St. L. Ry. Co.* 183 (184).

In publishing tariff, C., C. & St. L. Ry., shown as concurring in rate on limestone from Keesport, Ind., to Paulding, Ohio, instead of the Cincinnati Northern. Sixth-class rate charged found unreasonable to extent it exceeded commodity rate herein found reasonable. Reparation awarded. *German American Sugar Co. v. C. N. R. R. Co.* 475 (476).

Through error in tariff commodity rate on news-printing paper from Livermore Falls, Me., to Boston, Mass., for export, was increased to 10 cents. Rate found unreasonable, prior rate reinstated, and reparation awarded. *International Paper Co. v. M. C. R. R. Co.* 453 (454).

Through error in tariff compilation rate on tin-can stock did not apply on tin-can faucets and caps. *Standard Oil Co. (Cal.) v. A., T. & S. F. Ry. Co.* 557 (558).

Through inadvertence new tariff did not provide for compression in transit at Toccoa, Ga., on cotton from Hartwell, Ga. *Inman, Akers & Inman v. S. Ry. Co.* 564 (565).

Due to error in transferring the rate from one tariff to another, rate was not published. *Hudson River Lumber Co. v. L. & P. Ry. Co.* 571 (572).

EVIDENCE.

The essential character of the primary factors was the same in the 1910 and 1911 proceedings, but the attendant circumstances, the relation of the factors to one another and certain significant secondary factors were not the same in all. This lack of identity in the relationship and surroundings of the individual factors accounts for the different conclusions arrived at in different proceedings. *The Fifteen Per Cent Case*, 303 (317).

EXHIBITS. See APPENDIX.

EXPEDITED SERVICE. See NATIONAL DEFENSE.

EXPORT RATES.

On shipment of ties from Silverton, Oreg., to Bans Spur, Oreg., for export, component to Portland not shown unreasonable as compared with lower export rate of limited application. *Gates & Co. v. S. P. Co.* 79 (80).

Domestic rate assessed on mahogany lumber from Louisville, Ky., to Pensacola, Fla., for export, unreasonable to the extent it exceeded rate subsequently applicable. Reparation awarded. *Mengel & Bro. Co. v. L. & N. R. R. Co.* 545 (546).

EXPORTS.

Table showing number of bushels of grain, all kinds, exported from elevators at Baltimore, Md., during first nine months of 1916. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (46).

EXPRESS RATES.

Express rates on paper in carloads from Kimberly, Wis., to New York, N. Y., based on the first-class any-quantity rate, not found unreasonable. *Kimberly Clark Co. v. American Exp. Co.* 7 (8).

Classification of laundry at first class, pound rates, in the official express classification not shown to be unreasonable or unjustly discriminatory to the extent it exceeded second class, pound rate. *Laundrymen's National Asso. v. Adams Exp. Co.* 361 (362).

Charges on certain l. c. l. shipments of fresh fish from Selkirk, Manitoba, to Buffalo, N. Y., not shown to be unreasonable or unduly discriminatory with respect to the transportation within the Commission's jurisdiction. *Booth Fisheries Co. v. American Exp. Co.* 363.

FACTOR.

Combination rates on certain carloads and less-than-carload shipments of dressed poultry, butter, and eggs from interior Iowa points and Trenton, Mo., to destinations east of the Indiana-Illinois State line, found unreasonable to extent that components up to the Mississippi River exceeded the proportional class rates prescribed in *Interior Iowa Cities Cases*, 28 I. C. C., 64 and 29 I. C. C., 536. *Swift & Co. v. B. & O. R. R. Co.* 8 (11).

Factor of combination rate on news print paper from Brunswick, Me., to Philadelphia, Pa., originating at Livermore Falls, Me., not found unreasonable because it was reduced voluntarily by carriers subsequent to movement of shipment. *International Paper Co. v. M. C. R. R. Co.* 30 (31).

On shipment of motorcycles originating in eastern territory destined to points west of the Mississippi River, factor of rate assessed in western classification territory found unreasonable to extent it exceeded one and one-half times first class. Reparation awarded. *Browning Bros. Co. v. B. & A. R. R. Co.* 63 (64).

Through rate on wool in sacks from Slater, Wyo., to Cleveland, Ohio, found unreasonable to extent that the rate charged for the haul from Slater to the Mississippi River exceeded the component applicable on shipments destined to the Atlantic seaboard. *Adams v. C. & S. Ry. Co.* 69 (70).

On shipment of ties from Silverton, Oreg., to Bans Spur, Oreg., for export, component to Portland not shown unreasonable as compared with lower export rate of limited application. *Gates & Co. v. S. P. Co.* 79 (80).

On l. c. l. shipment of potatoes from Seeley Creek, N. Y., to Arch Creek, Fla., component of combination rate applying north of Jacksonville, Fla., not found unreasonable, but component applying south of that point found unreasonable to extent it exceeded rate subsequently established. *Wilcox v. E. R. R. Co.* 149 (150).

Combination rate on orchard heaters from Martins Ferry, Ohio, to Medford, Oreg., found unreasonable to extent the factor from Martins Ferry, to Portland, Oreg., exceeded the rate on stamped ware, which rate was subsequently made applicable to orchard heaters. *Wheeling Corrugating Co. v. P. Co.* 165 (166).

Rate on ice bunkered in car of lard from Kansas City, Mo., to Saltillo, Mexico, found unreasonable to the extent it exceeded the factor beyond Laredo, Tex. Reparation awarded. *Morris & Co. v. I. & G. N. Ry. Co.* 223 (224).

Rates on strawboard boxes from Baltimore, Md., and Vincennes, Ind., to Sapulpa, Okla., found unreasonable to extent the factor applicable beyond East St. Louis, Ill., exceeded factor subsequently established. Reparation awarded. *Schram Glass Mfg. Co. v. St. L. & S. F. R. R. Co.* 465 (466).

Factor of combination rate on lumber from Hosford, Fla., to River Junction, Fla., on shipments to Pensacola, Fla., for export, increased for purpose of protecting carrier in the division of rates. Increase not justified. *Graves Bros. Co. v. A. N. R. R. Co.* 470 (472).

FACTOR—Continued.

Rate on carpenters' molding from Thomasville, Ga., to West Palm Beach, Fla., found unreasonable to the extent that the portion applicable from Jacksonville, Fla., to West Palm Beach exceeds rate on lumber. Reparation awarded. *Daugherty, McKay & Co. v. A. C. L. R. R. Co.* 535 (536).

Combination rates on yellow-pine lumber from points in Louisiana to destinations in Iowa, found unreasonable to the extent the factor applicable beyond Fulton, La., exceeded that formerly in effect and subsequently reestablished. Reparation awarded. *Hudson River Lumber Co. v. L. & P. Ry. Co.* 571 (572).

FERRY CHARGES.

Failure of respondent to make an allowance to New York milk dealers for ferriage of their trucks to and from Jersey City terminals not found unreasonable. *Milk and Cream Rates to New York City*, 412 (421).

FINANCIAL CONDITIONS.

Railroads of Michigan are in a poor financial condition. *C. F. A. Class Scale Case*, 254 (274).

Majority of carriers show a healthy condition from financial and operating standpoints. Not only the successful and strong must be considered but also the unsuccessful and the weak. *The Fifteen Per Cent Case*, 303 (315).

FINDING OF COMMISSION.

The Commission will, through the medium of the monthly reports of the carriers, keep in close touch with the operating results for the future, and if it shall develop that the fears which have prompted the carriers to seek an increase are realized or that their realization is imminent, will be ready to meet that situation by such modification or amplification of the conclusions and orders herein reached and entered as are shown to be justified. *The Fifteen Per Cent Case*, 303 (325).

"FLEXIBLE LIMIT OF JUDGMENT."

To enable the Commission to prescribe reasonable rates the Congress has delegated to the Commission a quasi legislative or administrative power in the exercise of which there inheres necessarily and admittedly a wide but sound discretion aptly termed the "flexible limit of judgment which belongs to the power to fix rates." *Arlington Heights Fruit Exchange v. S. P. Co.* 248 (250).

FLOODS.

Because of flood conditions, shipment of lumber from Yellow Pine, La., to Hyannis, Mass., could not move as routed and complainant ordered car forwarded over route taking higher rate, which rate was subsequently reduced. Rate not found unreasonable. *Globe Lumber Co. v. S., L. B. & S. Ry. Co.* 135 (136).

FOOT-AND-MOUTH DISEASE.

Carload of hay from Strader, Wis., was refused by consignee at Chicago on account of its bad condition. Reconsignment at St. Louis denied because of a federal embargo on account of reported foot-and-mouth disease infection. Shipment later sold at Chicago. Demurrage charges found lawfully collected. *Union Hay Co. v. C., St. P. M. & O. Ry. Co.* 597.

FRACTIONS.

In publishing rates in C. F. A. territory fractions of less than $\frac{1}{4}$ or .25, to be omitted; fractions of $\frac{1}{4}$ or .25, or greater, but less than $\frac{3}{4}$ or .75, to be shown as one-half ($\frac{1}{2}$); fraction of $\frac{3}{4}$ or .75, or greater, to be increased to the next whole figure. *C. F. A. Class Scale Case*, 254 (287).

FUEL.

Statement showing comparison of fuel prices per ton, 1916-1917. *The Fifteen Per Cent Case*, 303 (339).

Coal and oil for the operation of passenger trains in Arizona is obtained from California. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 436 (443).

GATEWAYS.

Traffic from the southwest to Chicago and Cincinnati may or may not pass through central freight association territory depending on the river crossing through which it moves. *Globe Soap Co. v. A. & S. Ry. Co.* 25 (26).

GRADED RATES.

Present rates in C. F. A. territory for distances of 475 miles, and based on 60 per cent of the Chicago-New York rates and are graded down, while the rates fixed by the Ohio statute are graded up until the two meet. *C. F. A. Class Scale Case*, 254 (258).

GRAIN.

It is the right of the carriers to apply different rules to different kinds of grain only when the transportation conditions are so unmistakably different as to warrant the distinction. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (52).

GROUP RATES.

Basis used for making group rates under proposed rates in C. F. A. territory throughout the various groups shown. *C. F. A. Class Scale Case*, 254 (266-270).

HALF RATES.

Carrier's tariff providing for reconsignment to stations on its line at one-half the rate from the reconsigning point to the new destination found unreasonable to extent they exceeded charges based on the joint through rate in effect from origin to destination, plus a reasonable charge for the reconsignment. Reparation awarded on shipment of ash lumber from Cairo, Ill., to Hartford, Conn., reconsigned to Boston, Mass. *Shafer Lumber Co. v. St. L., I. M. & S. Ry. Co.* 71 (72, 73).

ICING.

Rate on ice bunkered in car of lard from Kansas City, Mo., to Saltillo, Mexico, found unreasonable to the extent it exceeded the factor beyond Laredo, Tex. Tariffs formerly provided for free transportation to the Mexican border of such ice. Reparation awarded. *Morris & Co. v. I. & G. N. Ry. Co.* 223 (224).

Costs of icing carload shipments much less than on less-than-carloads. *Milk and Cream Rates to Philadelphia, Pa.* 371 (378).

Whether the schedules of the B. & M. provided for the free movement of ice from points of delivery of milk to starting point, or points intermediate, submitted for the Commission's determination. *Held*, B. & M. schedules did not at the time authorize the free transportation of ice in milk cars with returned empty milk containers. *Graustein v. B. & M. R. R.* 393 (407).

IMMIGRATION.

The Commission can not compel a carrier to reduce its fares solely on the ground that to do so would induce settlement of sparsely populated communities. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 436 (442).

IMPORTS.

Joint rate on wine from New Orleans, La., originating in Germany, to Sheboygan, Wis., found unreasonable. Lower combination rate in effect applicable to imports. Reparation awarded. *De Wilde & Sons v. C. & N. W. Ry. Co.* 207 (208).

INCLINE.

Complainant subjected to undue prejudice by defendant's arrangements for the use of river warehouse and incline. *Cumberland Transportation Co. v. C., N. O. & T. P. Ry. Co.* 444 (446).

INCOME.

Net operating income is derived from operating income by adjusting the operating income for hire of equipment and other rents. *The Fifteen Per Cent Case*, 303 (321).

INDIANA NORTHERN RAILWAY.

Described. *Oliver Chilled Plow Works v. N. Y. C. R. R. Co.* 356.

"INFLATIONS."

- The "inflations" in the proposed rates occur principally on two and three line hauls, and in most cases do not result in higher rates than would have resulted had the carriers strictly applied the scale between all points and added thereto differentials of combination of local rates. *C. F. A. Class Scale Case*, 254 (265). Many "inflations" in proposed rate structure would be eliminated by establishment of new basing points, which would increase and decrease rates in various instances, on account of long-and-short-haul rule. *Id.* (266).

INFORMAL COMPLAINT.

Application to make refund filed on special docket in November, 1914, admitted rates were unreasonable. Typewritten explanation to same stated rates were discriminatory. Application was denied February 27, 1915, and formal complaint was not filed until February 7, 1916. *Held*, Claim barred as to shipments moving prior to February 7, 1914. *Edwards & Loomis Co. v. P., C., C. & St. L. Ry. Co.* 20 (21).

INSULATED CARS. *See* REFRIGERATOR CARS.

INSURANCE.

Lumber stored at pier 40, Philadelphia, Pa., is at the carrier's risk as warehouseman, and in self-protection it must provide insurance based on the estimated value of the average stocks in store. *Sheip Mfg. Co. v. B. & O. R. R. Co.* 408 (409).

INTERMEDIATE RATES. *See* THROUGH AND LOCAL.

INTERSTATE COMMERCE.

Shipments of milk from points in southern New Jersey, consigned to Philadelphia, via Cooper's Point, Camden, N. J., called for there by wagons of the Philadelphia dealers, and ferried across the Delaware River to Philadelphia, *Held*, To be interstate commerce and subject to the Commission's jurisdiction. *Milk and Cream Rates to Philadelphia, Pa.* 371 (389).

INVESTIGATION.

The view that an investigation would be impossible without suspension of these tariffs is erroneous. *The Fifteen Per Cent Case*, 303 (310).

The form of investigation the Commission adopted fitted the subject to be investigated. *Id.* (310).

The investigation which generally follows the suspension of tariffs, in the instant case, preceded their suspension. *Id.* (317).

Milk and Cream Rates to Philadelphia, Pa. 371.

Milk and Cream Rates to Boston, Mass. *Graustein v. B. & M. R. R.* 393.

Milk and Cream Rates to New York City, 412.

INVESTMENT.

Questions whether carriers should be permitted to earn a reasonable return on property donated and property paid for out of revenues of carriers not discussed, as they are now pending in valuation proceedings. *The Fifteen Per Cent Case*, 303 (315).

Comparison of increase in property investment and traffic. *Id.* (348).

Ratio of net operating income to property investment. *Id.* (349).

Ratio of total operating revenue to property investment. *Id.* (349).

Ratio of taxes to property investment. *Id.* (353).

INVESTMENT—Continued.

Fact that dealers have made investments upon the supposition that the adjustment would be continued is by no means controlling. *Milk and Cream Rates to New York City*, 412 (429).

Association representing about 16,000 amusement managers, have invested about \$1,000,000,000 in show property, including private cars. *Special Passenger Equipment*, 590.

JOINT RATES.

Joint rate on flour and mill stuffs from Williston, N. Dak., to San Francisco, Cal. not shown unreasonable as compared with combination rate, one component of which was not on file with Commission, and one component applied only on wheat, although subsequently made applicable on flour. *Williston Mill Co. v. G. N. Ry. Co.* 137 (138).

Contended that the refusal of the Rutland and the B. & M. railroads to establish and maintain joint rates on milk from points on the Rutland to Boston was unduly prejudicial. *Held*, Relation of rates on milk to Boston maintained by the M. C. in connection with the B. & M. from points in Maine and Vermont, and by the Rutland and the B. & M. from Vergennes and other points on the Rutland resulted in undue prejudice to the extent enumerated. *Graustein v. B. & M. R. R.* 393 (397).

Proposed cancellation of joint rates on bituminous coal from the Oak Hills, Colo., district to points on the C., R. I. & P. Ry. in Kansas, Nebraska, and Missouri, leaving in effect higher combination rates, found not to have been justified. *Oak Hill, Colo. Coal*, 455 (460).

Cancellation of joint rates can not be justified merely on the ground of inability to agree upon the proper divisions of such rates. *Id.* (460).

JURISDICTION.

Contention that rates on messages from points in foreign countries to points in the United States are through rates and that the Commission has no jurisdiction over such through rates, *Held*, The Commission has authority to require the defendant, in imposing charges for its service within this country, to avoid unjust discrimination, not only as between persons, but as between carriers. *Commercial Cable Co. v. W. U. T. Co.* 33 (38, 39).

Commission's jurisdiction is limited to determining the lawfulness of the practices of embargoes and to requiring, after full hearing, the establishment and maintenance of such regulations or practices as may be found to be just, fair, and reasonable. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (53).

Commission's jurisdiction over claim for reparation does not extend to claims arising from loss or damage to shipments in transit, such claims being cognizable only in the courts. *Buss Co. v. N. Y. C. R. R. Co.* 161.

By recent act of Congress the Commission has been given jurisdiction over the movement, distribution, exchange, interchange, and return of freight cars. *The Fifteen Per Cent Case*, 303 (323).

On shipments of fresh fish from Selkirk, Manitoba, to Buffalo, N. Y., the Commission's jurisdiction extends over that part of the transportation performed within the United States. *Booth Fisheries Co. v. American Exp. Co.* 363.

Shipments of milk from points in southern New Jersey, consigned to Philadelphia, via Coopers Point, Camden, N. J., called for there by wagons of the Philadelphia dealers, and ferried across the Delaware River to Philadelphia, *Held*, To be interstate commerce and subject to the Commission's jurisdiction. *Milk and Cream Rates to Philadelphia, Pa.* 371 (389).

Commission's jurisdiction to award damages growing out of inadequate service or facilities challenged. Jurisdiction is clear where the injury and damages suffered by complainants are shown to be directly due to violations of the provisions of the act. *Graustein v. B. & M. R. R.* 393 (406).

LEGAL QUESTIONS.

Case dealt with from economic standpoint rather than legal. The Fifteen Per Cent Case, 303 (317).

LEGAL RATES.

On two mixed carloads of canned hominy and canned sauerkraut from Jeffersonville, Ind., to Nashville, Tenn., sauerkraut was not specifically included in classification but was included in commodity description. *Held*, That carload rate on canned goods was properly applicable. Reparation awarded. *McKay & Morgan v. L. & N. R. R. Co.* 146 (148).

No rate was specifically applicable over the route of movement and it therefore becomes necessary to determine whether the charges collected were reasonable, and if not, what would have been reasonable charges. *Zelnicker Supply Co. v. St. L. S. W. Ry. Co.* 185.

Charges on shipments of black powder from Falls Junction, Ohio, to Mascoutah, Ill., exceeded combination rate legally applicable. Reparation awarded. *Austin Powder Co. v. W. & L. E. R. R. Co.* 199 (200).

Charges on a shipment of hoisting machines from Yonkers, N. Y., to Salt Lake City, Utah, at combination class rates based on Chicago, found illegal to the extent they exceeded charges based on fifth-class rate to Mississippi River and commodity rate beyond. Reparation awarded. *Otis Elevator Co. v. N. Y. C. R. R. Co.* 201 (202).

Fifth-class rate on building granite from Hardwick, Vt., to Warren, Ohio, was assessed during period of its suspension. Lower commodity rate was legally applicable. Reparation awarded. *Woodbury Granite Co. v. St. J. & L. C. R. R. Co.* 214 (215).

Charges on water tank shipped from Collinsville, Tex., to Frederick, Okla., found illegal to extent they exceeded those applicable on basis of rate and minimum weight applying on traction engine with which it was shipped. Reparation awarded. *Bowling v. M., K. & T. Ry. Co. of Texas*, 473 (474).

Rate on nut punchings from Allegheny, Pa., to Oglesby, Ill., found illegal. Under the analogous article rule, *Held*, entitled to sixth-class rate applying to iron pebbles. Reparation awarded. *Chicago Portland Cement Co. v. I. C. R. R. Co.* 477 (478).

Rate of 10 cents on brick from Chanute, Kans., to Woolstock, Iowa, collected without tariff authority. Subsequent to shipment charges were demanded on basis of joint class E rate of 17.5 cents. Combination rate of 13 cents found legally applicable. Obligation upon complaint to pay lawful charge. *Sunderland Bros. Co. v. A., T. & S. F. Ry. Co.* 481 (482).

Portions of shipments of amusement device known as "aeroscope," held not included in tariff provision applying to bridge and structural iron. Rates charged legally applicable. *Federal Bridge Co. v. A., T. & S. F. Ry. Co.* 537 (538).

Proportional rate applicable on traffic arriving at Jersey City, N. J., over the Erie R. R. not found to have been applicable to imported shipment of fresh meat from shipside, Brooklyn, N. Y., to Jersey City. *Swift & Co. v. E. R. R. Co.* 554 (556).

Shipment of brick from Brazil, Ind., to Montieth, Iowa, found overcharged to extent charges exceeded those at rate legally applicable. Reparation awarded. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 584 (586).

LIGHTERAGE.

Reparation awarded for misrouting and demurrage charges collected on shipment of lumber from Bronx Terminal, N. Y., which was erroneously floated to Jersey City, N. J., when request was made to deliver at foot of East Fifth Street, New York. *Currie & Campbell v. C. R. R. Co. of N. J.* 3.

LIMITATION OF ACTION.

Application to make refund filed on special docket in November, 1914, admitted rates were unreasonable. Typewritten explanation to same stated rates were discriminatory. Application was denied February 27, 1915, and formal complaint not filed until February 7, 1916. *Held*, Claim barred as to shipments moving prior to February 7, 1914. *Edwards & Loomis Co. v. P., C., C. & St. L. Ry. Co.* 20 (21).

Claim for reparation on one shipment involved, held barred by the statute of limitations. Shipment was delivered February 9, 1914, and informal complaint was presented February 9, 1916. *Friedman v. C. & N. W. Ry. Co.* 91.

Claim for reparation on a carload of lumber from Rainelle, W. Va., to New York, N. Y., barred by statute of limitations. The two-year period begins to run from the date when a shipment is delivered, not from the date on which the freight charges are paid. *Williams & Sons v. B. & O. R. R. Co.* 107.

Claims on certain shipments of lemons from California points to Miles City, Mont., found to have been abandoned. *Gamble-Robinson Fruit Co. v. S. P. Co.* 578 (579).

Six months' rule:

Claim for reparation on a carload of fig pulp from Fresno, Cal., to New York, N. Y., not filed within two years after the cause of action accrued, nor within a reasonable time after notice that claim could not be adjusted informally, therefore must be held to have been abandoned. *Guggenheimer & Co. v. A., T. & S. F. Ry. Co.* 60.

Formal complaint not filed within reasonable time after notice that complaint could not be adjusted informally, *Held*, Barred by statute. *Browning Bros. Co. v. B. & A. R. R. Co.* 63.

Certain claims that were presented informally were subsequently abandoned. *Sall Mountain Co. v. Southern S. S. Co.* 573 (574).

LINE HAUL. *See also* TWO-LINE AND THREE-LINE HAULS.

The law upholds the carrier in retaining tonnage on its line where the transportation can be performed with reasonable dispatch and without undue discrimination. *West Coast Lumber Mfrs. Assn. v. T. E. R. R. Co.* 227 (229).

The Commission would not be warranted in ordering the reestablishment of the canceled routes, thereby depriving the carrier of a haul of 400 miles. *West Coast Lumber Mfrs. Assn. v. S., P. & S. Ry. Co.* 230 (234).

LOADING.

Excelsior and excelsior pads: Average loading shown. *Marinette-Green Bay Mfg. Co. v. I. C. R. R. Co.* 507 (508).

LOADING AND UNLOADING.

The expense of loading and unloading less than carload shipments of bottled milk is greater than in the case of milk in cans. *Milk and Cream Rates to New York City*, 412 (427).

LOCATION.

Comparatively high rates for short distances, and comparatively low rates for long distances, takes from the producer within the short distance territory whatever advantage he is entitled to because of his proximity to the consuming market. *Milk and Cream Rates to New York City*, 412 (424).

The fact that milk may cost more and in other ways may be more difficult for dealers to secure from comparatively near-by points is no justification for the carriers to maintain unduly preferential rates from distant points. *Id.* (424).

Michigan: Disadvantages of Michigan compared with other states in C. F. A. territory, pointed out. *C. F. A. Class Scale Case*, 254 (273).

Oak Hills district, Colo: *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 236 (238).

LOCOMOTIVES.

Statement showing prices paid for locomotives in 1917 as compared with 1916 or prior thereto. The Fifteen Per Cent Case, 303 (339).

LONG-AND-SHORT HAUL.

In General:

Subsequent reduction in the rates removed the alleged violation. *Wyoming Shovel Works v. D. & H. Co.* 197 (198).

Percentage relations observed in the C. F. A. scale for all distances over 450 miles prevented a violation of the long-and-short haul rule. *C. F. A. Class Scale Case*, 254 (261).

Departure from the long-and-short haul rule of the fourth section does not of itself prove that the rate from the intermediate point was unreasonable.

Stanton Co. v. N. P. Ry. Co. 583 (584).

Aberdeen, S. Dak.: Through oversight, rate on dried fruit from San Francisco, Cal., to Minneapolis and St. Paul, Minn., was not made applicable to Aberdeen, resulting in a violation of the long-and-short haul rule. Reparation awarded on shipment involved on basis of rate subsequently made applicable. *Aberdeen Wholesale Grocery Co. v. C., M. & St. P. Ry. Co.* 23.

Arlington, Ga.: Authority to continue rates on coal from certain points in Alabama and Kentucky to Bainbridge, Ga., lower than rates to Arlington and other intermediate points, denied. *Arlington Cotton Oil Co. v. C. of G. Ry. Co.* 188 (190).

Cookstown, N. J.: No finding made on application for authority to maintain lower rates on cranberries from Cookstown, N. J., to Fort Smith, Ark., than from or to intermediate points, as issue presented is too broad for record in this case. *Goodner-Malone Co. v. M., O. & G. Ry. Co.* 531 (534).

Hosston, La.: Rate on lumber from Hosston, La., to Texarkana, Tex. higher than from farther distant points not shown unreasonable. Since the complaint the fourth section violation has been corrected. *Webster v. T. & P. Ry. Co.* 364.

Ivorydale, Ohio: Authority to continue commodity rates on cottonseed oil from Hillsboro and Decatur, Ala., to Ivorydale, Ohio, lower than class rates from or to intermediate points, denied. *Proctor & Gamble Co. v. S. Ry. Co.* 177 (178).

Manitowoc, Wis.: On account of the circuitousness of route and the existence of competitive conditions at East St. Louis, Ill., which do not exist at intermediate points, carrier is unwilling to apply lower rate from such points. *Zelnicker Supply Co. v. S. Ry. Co.* 225 (226).

Manitowoc and Sheboygan, Wis.: If rates to and from Manitowoc and Sheboygan were to be continued on the Milwaukee basis it would require a violation of the long-and-short haul rule unless the rates at the intermediate points were brought down to the same level. *C. F. A. Class Scale Case*, 254 (282).

Paducah, Ky.: Rate on ice from Paducah, Ky., to Martin, Tenn., was reduced but no change was made in rates to intermediate points, thereby creating violations of the long-and-short haul rule that were not authorized by any order of the Commission. *Paducah Board of Trade v. N., C. & St. L. Ry.* 359 (360).

Selma, Ala.: Authority to continue lower rates on asphaltum-coated cotton fabrics from Selma, Ala., to East Point, Ga., lower than rates applicable from or to intermediate points, denied. *Valley Creek Cotton Mills Co. v. W. Ry. of Ala.* 123 (124).

Spokane, Wash.: Rate on inedible tallow and grease from Spokane, Wash., to Chicago, Ill., not shown unreasonable as compared with lower rates from farther distant points. *Stanton Co. v. N. P. Ry. Co.* 583 (584).

Texas common points: Authority to continue rates on steel rolling doors from Columbus, Ohio, to Port Arthur and Texas City, Tex., lower than to Texas common points, intermediate thereto, denied. *Kinnear Mfg. Co. v. P., C., C. & St. L. Ry. Co.* 74 (76).

LONG-AND-SHORT HAUL—Continued.

Washington points: Cancellation of joint rates between the Tacoma Eastern R. R. and N. P. Ry. Co. to eastern points left in effect rates to some points higher than those to farther distant points. Defendants stated that these violations were unintentional and would be eliminated. *West Coast Lumber Mfrs. Asso. v. T. E. R. R. Co.* 227 (229).

LONG HAUL.

Carrier issued an embargo in order to get benefit of long haul. *Held*, An embargo is an emergency measure adopted where it is physically impossible for carriers to transport or where there is an unusual accumulation of traffic, and carriers, may not, under the guise of an embargo, attempt to accomplish results which the law requires shall be effected only by means of published tariffs. *Powell-Myers Lumber Co. v. St. L., I. M. & S. Ry. Co.* 594-596.

LOSS AND DAMAGE.

Claim for damages resulting from loss of corn in transit, dismissed for want of jurisdiction, such claims being cognizable only in the courts. *Buss Co. v. N. Y. C. R. R. Co.* 161.

LOW RATES.

The Commission can not compel a carrier to reduce its fares solely on the ground that to do so would induce settlement of sparsely populated communities. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 436 (442).

MAPS.

Key to maps showing C. F. A. terminal and junction points filed as Appendixes 11 and 12. *C. F. A. Class Scale Case*, 254 (266).

Appendixes Nos. 11, 12, and 13. Maps showing junction and terminal points, and percentage territory in C. F. A. territory. *Id.* (Following page 302).

Showing territory embraced in Arkansas and Missouri, wherein differentials in rates on uncompressed cotton are in issue. *City of Memphis v. C., R. I. & P. Ry. Co.* 487 (491).

MARKET COMPETITION. See COMPETITION (MARKET).**MARKING PACKAGES.**

Complainant not shown to have complied with classification rule requiring the marking of each piece of l. c. l. freight. Carload rate and minimum not shown unreasonable. *Columbian Iron Works v. S. Ry. Co.* 173 (174).

MEASURE OF RATES.

Increased prices of materials and supplies, the increased cost of fuel, and increased wages are all significant and extremely important factors in the situation here considered. *The Fifteen Per Cent Case*, 303 (318).

Commission not warranted in finding that the fares to Pacific coast destinations are a proper measure of the fares to Arizona points. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 436 (441).

MESSAGES.

Deferred cablegrams transmitted only after nonurgent private telegrams and press telegrams; except that deferred messages which have not reached their destination within 24 hours shall be transmitted in turn with non-deferred telegrams. *Commercial Cable Co. v. W. U. T. Co.* 33 (35).

Deferred messages must be in plain language of the country of origin or destination, or in French, the use of cipher or code words not being permitted. *Id.* (35).

Rates on cable messages from points in foreign countries to points in the United States are apparently not "joint through rates" such as those published by a railroad which holds the concurrences of its connections, but "combination" rates, one component part of which is the charge made by the land line for transmitting the message from New York to destination. *Id.* (38, 39).

MESSAGES—Continued.

Refusal of the Western Union Telegraph Company to transmit for complainant from New York to points in the United States deferred cable messages originating in South America, upon the same terms as such messages are transmitted for complainant's competitor, subjects complainant to unjust discrimination. *Id.* (39).

Cable messages transmitted over cables leased and operated by defendant and transferred at New York to defendant's land lines for further transmission to an inland point in the United States may be regarded as continuous messages; but the transmission of a through message is not a continuous service. *Id.* (37, 39).

MEXICO.

On shipment of fertilizer from Mexico City, Mexico, to Colton, Cal., the proportional rate from Laredo, Tex., to Colton, found justified. On account of the disturbed conditions in Mexico the El Paso, Tex., gateway was closed, and the lower rate was canceled. Carrier's agent had stated that lower rate would apply. *Olalde y Compania v. S. P. Co.* 155 (156).

Rate on ice bunkered in car of lard from Kansas City, Mo., to Saltillo, Mexico, found unreasonable to the extent it exceeded the factor beyond Laredo, Tex. Reparation awarded. *Morris & Co. v. I. & G. N. Ry. Co.* 223 (224).

MILEAGE.

Shown that the passenger-train mileage of the Pennsylvania Railroad is greater than its freight-train mileage. *Milk and Cream Rates to Philadelphia, Pa.* 371 (383).

MILEAGE RATES. See BLOCK RATES.**MILITARY TRANSPORTATION.**

It was not shown that military transportation had been in the past, or is likely to be in the future, a financial burden to the carriers. *The Fifteen Per Cent Case*, 303 (312).

MILK-SHIPPING STATIONS.

Contract between the Rutland Railroad and Stephen C. Millett with respect to the building and maintenance by him of milk-shipping stations for use of shippers of milk to New York from Vergennes and other stations intermediate to Rutland and its refusal to give complainant access to them under reasonable terms or to construct similar buildings for her use on shipments to Boston unduly preferred shippers to New York and unduly prejudiced complainant. *Graustein v. B. & M. R. R.* 393 (404).

Most of the receiving stations and creameries in the State of New York are owned by the shippers, and where this is not the case the rental charges are based on the value of the property. *Milk and Cream Rates to New York City*, 412 (417).

MILK TRAINS.

With each milk train there are sufficient employees to load and ice the cars and unload empty containers. *Milk and Cream Rates to New York City*, 412 (418).

MINIMUM WEIGHT.

In General: Ordinarily carload minimum weights should be established with reference to the loading capacity of the car; if carriers desire to protect themselves from unremunerative charges per car they should do so by regulating the rate and not by prescribing minimum weights which manifestly can not be loaded. *Dallas Cooperage & Woodenware Co. v. G., C. & S. F. Ry. Co.* 468 (469).

Barrels: Minimum weight of 20,000 pounds on slack barrels from Dallas and Oak Cliff, Tex., to Oklahoma points found unreasonable to the extent it exceeds 10,000 pounds for 36-foot cars, subject to rule 6-B of the western classification. *Dallas Cooperage & Woodenware Co. v. G., C. & S. F. Ry. Co.* 468 (470).

MINIMUM WEIGHT—Continued.

Cement: Joint rate and minimum weight on cement from Iola, Kans., to Union Star, Helena, and Cosby, Mo., found unreasonable to the extent that they exceeded the aggregate of intermediate rates and minima to and from St. Joseph, Mo. Reparation awarded. *Iola Portland Cement Co. v. M., K. & T. Ry. Co.* 167 (168).

Implements: Charges collected on returned shipment of agricultural implements found illegal as they were based on weight of 36,000 pounds, whereas the shipment weighed less than 24,000 pounds, the minimum applicable in connection with legal rates assessed. Reparation awarded. *Independent Harvester Co. v. C., I. & L. Ry. Co.* 151 (152).

Milk and Cream: No evidence of record upon which to reduce the carload minimum on milk from 8,000 quarts now maintained to 4,000 quarts. *Milk and Cream Rates to Philadelphia, Pa.* 371 (389).

Milk and Cream: It does not appear that shippers can not load to the prescribed minima and nothing in record warrants a change. *Milk and Cream Rates to New York City*, 412 (428).

Rivets: On rivets from Pittsburgh, Pa., to Seattle, Wash., carrier contended that minimum should not be lowered to meet the needs of one shipper. Minimum weight of 80,000 pounds found justified. *Garland Nut & Rivet Co. v. P. & L. E. R. R. Co.* 593 (594).

Tank: Charges on iron tank from Shannondale, Mo., to Rantoul, Kans., too long to be loaded in ordinary box car, based on minimum weight of 5,000 pounds, found unreasonable to extent minimum exceeded 4,000 pounds. Reparation awarded. *Prairie Oil & Gas Co. v. W. Ry. Co.* 1.

Tank Cars. The assessment of charges on full gallonage capacity of tank cars is virtually a publication of graduated minima based upon the varying sizes or capacities of the cars in service. Every consideration of economy if not of safety demands the movement of tank cars under full loading. *Lange Soap Co. v. G., H. & S. A. Ry. Co.* 452 (454).

MISQUOTATION OF RATES.

On shipments of fertilizer from Mexico City, Mexico, to Colton, Cal., the proportional rate from Laredo, Tex., to Colton, found justified. Carrier's agent informed complainant that lower rate would apply. Such misquotation is not sufficient upon which to base an order awarding reparation. *Olalde y Compania v. S. P. Co.* 155 (156).

Goods were purchased upon representation that lower rate applied, but the misquotation of a rate affords no basis for a finding that the rate applied to a shipment is unreasonable. *Lookout Paint Mfg. Co. v. N. Y. C. R. R. Co.* 539 (541).

MISROUTING.

Carload of lumber from Bronx Terminal, N. Y., requested to be forwarded to foot of East Fifth street, New York, was erroneously forwarded to Jersey City, N. J. Reparation awarded for misrouting and demurrage. *Currie & Campbell v. C. R. R. Co. of N. J.* 3.

Shipment of pyrites cinder from Philadelphia, Pa., to Coatesville, Pa., billed "B&O and P&R." No junction point specified. Had B. & O. delivered shipment to the P. & R. at Park Junction, Pa., instead of Elsmere Junction, Del., lower rate would have applied. *Held*, Not misrouting. *Harrison Bros. & Co. v. B. & O. R. R. Co.* 85 (86).

Upon being advised that routing instructions specified for carload of pecans from Albany, Tex., to Denver, Colo., were impossible of execution, shipper ordered instructions ignored and requested shipment to be forwarded via cheapest route. Reparation awarded for misrouting. *Hurd Brokerage Co. v. W. V. R. R. Co.* 117 (118).

MISROUTING—Continued.

Shipment of heading from Shingle House, Pa., to Carlton, N. Y., was misrouted, as initial carrier failed to route the shipment via the cheapest route. Reparation awarded. *Hollingshead & Blei Co. v. N. Y. & P. Ry Co.* 169 (170).

Additional routing instructions appearing on the bill of lading were erroneously inserted by carrier's billing clerk. Carload of bituminous coal from Harrisburg, Ill., to Milbank, S. Dak., found to have been misrouted. Reparation awarded. *Rawson v. C., C. & St. L. Ry. Co.* 183 (184).

Initial carrier failed to route shipment of black powder from Falls Junction, Ohio, to Mascoutah, Ill., over the cheapest available route consistent with the routing instructions. Reparation awarded. *Austin Powder Co. v. W. & L. E. R. R. Co.* 199 (200).

Routing instructions named connecting carrier, which delivered shipments. Had that carrier turned over shipment to third carrier, a lower rate would have applied. *Held*, Not misrouting, as instructions were complied with. *Dulweber Co. v. Y. & M. V. R. R. Co.* 549 (550).

Shipment of posts from Boy River, Minn., to Arnegard, N. Dak., found misrouted, as carrier failed to forward via cheapest route. Routing instructions designated connecting carrier, but did not specify rate nor junction point. *Page & Hill Co. v. G. N. Ry. Co.* 547 (548).

MISSTATEMENT.

Shipment refused at destination was ordered reconsigned, after erroneous advice that it had moved via certain route. As a result, a back-haul movement was involved, for which local rate was charged. *Held*, No violation of act. *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.* 209 (210).

MIXED CARLOAD.

Combination rate on mixed carload of oranges and lemons from Lordsburg, Cal., consigned to Portland, Oreg., and repeatedly diverted and reconsigned until it reached Everett, Wash., not found to have been improperly applied. *Randolph Fruit Co. v. S. P. Co.* 65 (66).

On mixed-carload shipments of canned hominy and canned sauerkraut, from Jeffersonville, Ind., to Nashville, Tenn., sauerkraut was not specifically included in classification but was included in commodity description. *Held*, carload rate on canned goods was properly applicable. Reparation awarded. *McKay & Morgan v. L. & N. R. R. Co.* 146 (148).

It does not appear that there is a commercial or public necessity for the establishment of mixed-carload rate on glass bottles and glass bottle stoppers from Butler, Pa., to Los Angeles, Cal. *Hamilton v. P. R. R. Co.* 191 (192).

Provision should be made for mixed-carload shipments of milk and cream, the charges on such shipments to be based on the per-can rates for each commodity in carloads, subject to the minimum provided for milk. *Milk and Cream Rates to Philadelphia, Pa.*, 371 (389).

Provision should be made for mixed shipments of milk, skim milk, buttermilk, pot cheese, cream, and condensed milk, in carloads, rates to be made on the basis of the per-can rates for each commodity in carloads, subject to the minimum provided for milk. *Milk and Cream Rates to New York City*, 412 (431).

MONOPOLY.

Permit system in effect on export shipments of grain at Baltimore gave certain exporters a monopoly of the grain business at the port, to the injury of many other grain dealers. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (50).

MOTOR SERVICE.

Stated that if rail rates are too high a considerable portion of short-haul traffic would be lost to motor service, but this fact could not enter very largely in determination of what would be reasonable rates. *C. F. A. Class Scale Case*, 254 (272).

NATIONAL DEFENSE.

To produce food and insure its expeditious movement to the place where it is to be used may properly be regarded as a measure of national defense. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (51).

NOTICE.

Allegation that defendants' practice of declaring, modifying, and suspending embargoes without sufficient notice to shippers subjects certain interests at Baltimore to undue prejudice, not sustained. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (52).

Carrier's agent at destination under no duty to notify consignor by wire that shipment was not promptly delivered. His duty went no further than to give intended purchaser notice of arrival. *Famechon Co. v. C., B. & Q. R. R. Co.* 598 (600).

OCEAN-AND-RAIL.

Ocean-and-rail and all-rail rates on cranberries from points in Atlantic seaboard territory to Muskogee, Okla., not shown unreasonable or unduly prejudicial. *Goodner-Malone Co. v. M., O. & G. Ry. Co.* 531 (534).

OFFICIALS.

Railroads have been managed by men of conspicuous ability and integrity, in whose achievement the whole nation may well take pride. *The Fifteen Per Cent Case*, 302 (313).

OPERATING CONDITIONS.

Conditions encountered in the Adirondack Mountains by the New York Central R. R. shown. *Diana Paper Co. v. P. R. R. Co.* 157 (158).

Conditions encountered by the Denver & Salt Lake R. R. (Moffat road) in crossing the continental divide. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 236 (238).

Conditions which caused carriers to seek increase; severe weather, heavy movement of empty cars, and increased wages, together with increases in the cost of materials and supplies, and to some extent of fuel. *The Fifteen Per Cent Case*, 303 (312).

Conditions encountered by lines operating in the Rocky Mountains. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 436 (442).

OPERATING EXPENSES. *See REVENUES AND EXPENSES; INVESTMENT.*

ORDER OF COMMISSION.

The Commission will, through the medium of the monthly reports of the carriers, keep in close touch with the operating results for the future, and if it shall develop that the fears which have prompted the carriers to seek an increase are realized or that their realization is imminent, will be ready to meet that situation by such modification or amplification of the conclusions and orders herein reached and entered as are shown to be justified. *The Fifteen Per Cent Case*, 303 (325).

If rates authorized to be increased are held by unexpired orders of the Commission, parties to such orders must, before filing such increased rates, apply for and secure specific modification of such orders. *Id.* (325).

Defendant failed to comply, in certain respects, with order of original report in not providing to complainant the same use of river warehouse and incline as to its competitor, resulting in an undue prejudice that must be removed. *Cumberland Transportation Co. v. C., N. O. & T. P. Ry. Co.* 444 (446).

If carriers have not complied with the Commission's order requiring the removal of unjust discrimination against Memphis and in favor of St. Louis in "concentration, compression, and reconsignment practices," they will be expected to do so immediately. *City of Memphis v. C., R. I. & P. Ry. Co.* 487 (493).

OUTAGE. *See* TANK CARS.

OVERCHARGES.

- Overcharges found to exist included in award of reparation made on account of rate found unreasonable. *Beaumont Timber Co., Ltd., v. I. & G. N. Ry. Co.* 5 (6).
- Combination rate on mixed carload of oranges and lemons from Lordsburg, Cal., consigned to Portland, Oreg., and repeatedly reconsigned with final destination at Everett, Wash., found legally applicable with exception of local rate between Roseburg and Medford, Oreg., which resulted in an overcharge. Reparation awarded. *Randolph Fruit Co. v. S. P. Co.* 65 (66).
- Overcharge included in award of reparation. *Brittain Bros. v. St. L. & S. F. R. R. Co.* 87 (90).
- Returned shipment of implements from Carmel, Ind., to Plano, Ill., overcharged as charges were on basis of 36,000 pounds, whereas the minimum applicable in connection with the legal rates assessed was 24,000 pounds. Reparation awarded. *Independent Harvester Co. v. C., I. & L. Ry. Co.* 151 (152).
- Reparation awarded for amount collected in excess of correct charges applicable on shipment of heading from Shingle House, Pa., to Carlton, N. Y. *Hollingshead & Blei Co. v. N. Y. & P. Ry. Co.* 169 (170).
- Shipment of glass bottles and glass bottle stoppers from Butler, Pa., to Los Angeles, Cal., found overcharged. Refund should be made to party properly entitled thereto. *Hamilton v. P. R. R. Co.* 191 (192).
- Charges on black powder from Falls Junction, Ohio, to Mascoutah, Ill., exceeded combination rate applicable. Reparation awarded. *Austin Powder Co. v. W. & L. E. R. R. Co.* 199 (200).
- Overcharge described should be promptly refunded. *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.* 209 (210).
- Shipments of building granite from Hardwick, Vt., to Warren, Ohio, overcharged. Fifth-class rate was assessed during period of its suspension. *Woodbury Granite Co. v. St. J. & L. C. R. R. Co.* 214 (215).
- Overcharge found to exist on water tank shipped with traction engine. Charges illegal as rate on engine was applicable. Reparation awarded. *Bowling v. M., K. & T. Ry. Co. of Texas*, 473 (474).
- As the exact weight of lumber, forming part of shipment, does not appear, the amount of the overcharge can not be determined. *Daugherty, McKey & Co. v. A. C. L. R. R. Co.* 535 (536).
- Charges on wrought-iron pipe, portion of shipment of amusement device, should have been on basis of rate on bridge railing. Overcharge should be refunded. *Federal Bridge Co. v. A., T. & S. F. Ry. Co.* 537 (538).
- Larger car furnished than ordered and charges based thereon, resulting in overcharge. Reparation awarded. *Page & Hill Co. v. G. N. Ry. Co.* 547 (548).
- Overcharge should be promptly refunded. *Dulweber Co. v. Y. & M. V. R. R. Co.* 549.
- Shipment of brick from Brazil, Ind., to Montieth, Iowa, found overcharged to extent charges exceeded those at rate legally applicable. Reparation awarded. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 584 (586).

PACKAGE FREIGHT.

- Rates on package freight of boat lines operating between Atlantic ports were originally established with reference to the size of the package, and without any relation to the rates of rail carriers. The rates are the result of competition with independent steamers which forced very low rates on commodities which were attractive to such boats. *Hopkins v. Ocean S. S. Co. of Savannah*, 568 (569).

PACKING.

Tea packed in bags is very susceptible to damage and may properly take a higher rate than tea in boxes. *Closset & Devers v. N. P. Ry. Co.* 99 (100).

On shipment of a soda fountain from Cleveland, Ohio, to Arkansas City, Kans., packed in box with apertures between the boards varying from 1 inch to 2½ inches, held such covering could not properly be termed a box and a higher rating applicable to crated shipments not found unreasonable. *Bishop-Babcock-Becker Co. v. N. Y. C. R. R. Co.* 141 (142).

First-class rating in western classification on less-than-carload shipments of shoe machinery, k. d., in crates not shown to be unreasonable or unduly prejudicial. *Champion Shoe Machinery Co. v. C. & A. R. R. Co.* 163 (164).

PANAMA CANAL. *See* BOAT LINES.

PARTIES.

Reparation awarded for misrouting. Waiver of undercharges authorized, but initial carrier should make settlement with its connections on basis of rate legally applicable. *Rawson v. C., C., C. & St. L. Ry. Co.* 183 (184).

Shipment of glass bottles and glass bottle stoppers from Butler, Pa., to Los Angeles, Cal., found overcharged. It appears that charges were paid by the consignee and not by complainant. Refund should be made to party properly entitled thereto. *Hamilton v. P. R. R. Co.* 191 (192).

Allegation that complainant is not entitled to reparation as the business was conducted by the Graustein Company, not sustained. The fact that business was conducted under the name of the Graustein Company is immaterial, as the record shows that it was owned and controlled by complainant. *Graustein v. B. & M. R. R.* 393 (405)

Complainant not shown in the transportation records as either consignor or consignee was in fact the true consignee, having paid and borne charges. *Gamble-Robinson Fruit Co. v. S. P. Co.* 578 (579).

PASSENGER FARES.

One-way first-class and one-way second-class passenger fares from points on and east of the Missouri River, etc., to points in the state of Arizona, not found unreasonable as compared with similar fares to terminal points in California, Oregon, and Washington, and to certain intermediate points. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 436 (443).

PAST RATES.

In the power to fix rates for the future, the Commission endeavors to prevent a public wrong; but in finding past rates unreasonable and awarding damages is the remedying of a private injury. *Arlington Heights Fruit Exchange v. S. P. Co.* 248 (250).

The only effect of finding a rate attacked unreasonable or otherwise unlawful as of the past is to afford a basis upon which to predicate an award of damages. *Id.* (250). Lower rates having been maintained for many years does not necessarily show that the present rates are unreasonable. *Old Vincennes Distillery Co. v. B. & O. S. W. R. R. Co.* 447 (452).

PEDDLER CARS. *See also* CAR PEDDLING.

Proposed rates on peddler-car traffic to points in western and northwestern Indiana without an increase in the state rates would give Indiana packers an increased preference. Such a condition can not be too strongly condemned. *C. F. A. Class Scale Case*, 254 (284).

PERCENTAGE RATES.

Proposed new system of class and commodity rates in C. F. A. territory based on certain percentages of the New York-Chicago basis, found not justified. Modifications suggested. *C. F. A. Class Scale Case*, 254 (285, 286).

PERCENTAGES.

Table showing percentages of the increases or decreases in the actual rates proposed between important cities and representative points in Zones A and B, and from Michigan points to points in Zones A and B. C. F. A. Class Scale Case, 254 (270-271).

"PERMIT" SYSTEM. *See also* EMBARGOES.

If A and B are both shippers of grain located at a given point in the west, and A has trade relations with a Baltimore exporter, to whom he usually ships his grain, while B has similar relations with an intermediate dealer at Baltimore, to whom he usually ships his grain, the permit system operates to the advantage of A and to the disadvantage of B. Baltimore Chamber of Commerce v. B. & O. R. R. Co. 40 (49).

PETITION.

As soon as the final hearing was concluded respondents petitioned the Commission to vacate its orders of suspension and permit the proposed rates to go into effect pending the final decision. This petition was not granted. C. F. A. Class Scale Case, 254 (275).

PIER.

Increased charge of \$3 per month for storage of lumber at pier 40, Philadelphia, found justified. Sheip Mfg. Co. v. B. & O. R. R. Co. 408 (410).

PLACEMENT.

Demurrage charges on potatoes at Thirty-third street station, New York, held on back tracks awaiting placement for unloading, found legally assessed. New York & New Jersey Produce Co. v. N. Y. C. R. R. Co. 203 (204).

PLEADING AND PRACTICE.

The mere filing of statements showing details of shipments at the original hearing does not serve to amend the pleadings so as to toll the statute of limitations. Arlington Heights Fruit Exchange v. S. P. Co. 248 (253).

Parties agreed to waive all technical requirements and guaranties of pleading in order that an expeditious and practicable procedure might be adopted. The Fifteen Per Cent Case, 303 (311).

POLICING.

Shown that defendants make no effort to police shipments of grain to insure delivery to the vessel named by the person to whom the permit was issued, during time of embargoes. Baltimore Chamber of Commerce v. B. & O. R. R. Co. 40 (45).

POSTING.

Rule 4 (h) Tariff Circular 18-A authorizes the publication of rates in one tariff and rules and regulations in another. The tariff containing such rules must be posted with the rate schedule, but it is not required that reference shall be made to other schedules of charges for purely accessorial facilities or services. Cumberland Transportation Co. v. C., N. O. & T. P. Ry. Co. 523 (525).

POWER OF COMMISSION.

The suggestion that the acquiescence in the practice of selling from the car throughout a substantial period of years, by the carriers in this limited section of the country, gives it the status of a transportation practice and confers upon the Commission the power, under section 15, to require its continuance on the theory that the withdrawal now of the privilege would be unreasonable, has no basis in reason or in authority. The Car Peddling Case, 494 (500).

PRECOOLING.

The Commission could not with entire confidence find that precooling can take the place of standard refrigeration under all circumstances. Arlington Heights Fruit Exchange v. S. P. Co. 248 (252).

PREFERENCES AND PREJUDICES. *See also* **RELATIVE RATES.**

In General: Present commodity rate on brooms from Wichita, Kans., to Omaha, Nebr., Council Bluffs and Sioux City, Iowa, not found unduly prejudicial. No evidence substantiating allegation of undue prejudice adduced. *Wichita Traffic Asso. v. A., T. & S. F. Ry. Co.* 143 (145).

Articles:

Bottles: Charges on shipment of empty glass bottles and glass-bottle stoppers from Butler, Pa., to Los Angeles, Cal., not shown unduly prejudicial because of higher rate on stoppers than on bottles. *Hamilton v. P. R. R. Co.* 191 (192).

Iron Ore: Combination rate legally applicable on iron ore from Ontario, N. Y., to Chattanooga, Tenn., not shown unreasonable or unduly prejudicial as compared with joint rate on chrome ore. *Lookout Paint Mfg. Co. v. N. Y. C. R. R. Co.* 539 (541).

Shoe Machinery: First-class rating in western classification on l. c. l. shipments of shoe machinery, k. d., in crates, not shown unduly prejudicial compared with second-class rating on machinery, n. o. i. b. n., k. d., in crates. *Champion Shoe Machinery Co. v. C. & A. R. R. Co.* 163 (164).

Boat Line:

Failure to provide for complainant the same use as for its competitor of river warehouse and incline in transfer of l. c. l. traffic, at a Cumberland River landing, Burnside, Ky., results in an undue prejudice and disadvantage that must be removed to eliminate violation of section 3. *Cumberland Transportation Co. v. C., N. O. & T. P. Ry. Co.* 444 (446).

Car Furnishing:

Boston & Maine and the Rutland railroads unduly prejudiced complainant and unduly preferred her competitors in furnishing milk cars for shipments to Boston in violation of section 3 of the act, and that the B. & M. failed to furnish proper cars upon reasonable request in violation of section 1 of the act. *Graustein v. B. & M. R. R.* 393 (403).

Localities:

Arlington, Ga.: Present rates on coal from certain points in Alabama and Kentucky to Arlington, Ga., not shown unreasonable or unduly prejudicial as compared with rates to Cuthbert and other Georgia points. *Arlington Cotton Oil Co. v. C. of G. Ry. Co.* 188 (190).

Boston, Mass.: Relation of rates to Boston on milk in carloads maintained by the M. C. in connection with the B. & M. from points in Maine, and by the B. & M. from points in Vermont, and by the Rutland and B. & M. from Vergennes and other points on the Rutland, between January 1, 1914, to February 15, 1915, was unduly preferential to complainant's competitors and unduly preferred her competitors to the extent of \$7.21 per car and after the latter date to the extent of \$8.46 per car, and were therefore unlawful. *Graustein v. B. & M. R. R.* 393 (397).

Brazil, Ind.: Combination rates on brick from Brazil, Ind., to Montith, Iowa, and York, Nebr., not shown unreasonable or unduly prejudicial because of the restricted application of a proportional rate from Brazil. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 584 (586).

Buffalo, N. Y.: If a reasonable scale of rates in C. F. A. territory when applied between Buffalo and Chicago increases the present rates the 60 per cent basis can not be controlling, nor will an increase in the Buffalo rates result in undue prejudice to that city. *C. F. A. Class Scale Case*, 254 (376).

Chaffee, Mo.: Rate on logs from Chaffee, Mo., to Cleveland, Ohio, not found to be unduly prejudicial to the advantage of complainant's competitor located at Cape Girardeau, Mo. *Kundtz Co. v. St. L. & S. F. R. R. Co.* 56 (58).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

- Clarksdale, Miss.: Rates on bituminous coal to Clarksdale, Miss., from Mercer, and De Koven, Ky., and grouped points, and from Benton and Christopher, Ill., and grouped points, not shown unreasonable or unduly prejudicial as compared with lower rates to more distant points. City of Clarksdale, Miss., *v. I. C. R. R. Co.* 108 (110).
- Grand Tower, Ill.: Third-class rate on fruit and vegetable baskets from Grand Tower, Ill., to St. Louis, Mo., not shown unreasonable or unduly prejudicial as compared with commodity rates from Metropolis, Ill. Merchants Basket & Box Co. *v. I. C. R. R. Co.* 485 (486).
- Gypsum, Utah: Rates on gypsum plaster in carloads from Gypsum, Utah, to Pocatello, Idaho, and Butte, Mont., found to be unduly prejudicial to complainant because of lower rates maintained on the same commodity to same destinations from Gypsum, Ore. Nephi Plaster & Mfg. Co. *v. D. & R. G. R. R. Co.* 433 (436).
- Harrisville and Newton Falls, N. Y.: Rate on bituminous coal from Pennsylvania mines to Harrisville and Newton Falls, N. Y., not shown unreasonable or unduly prejudicial as compared with rate to Watertown, Carthage, and Massena Springs, N. Y. Diana Paper Co. *v. P. R. R. Co.* 157 (159).
- Ivorydale, St. Bernard, and Cincinnati, Ohio: Rates on cottonseed oil, soap stock, tank bottoms, and inedible tallow from Arkansas, Louisiana, Missouri, Oklahoma, and Texas to, increased in June 1915, in conformity with findings in *The Five Per Cent Case*, 32 I. C. C., 325, *Held*, Upon further hearing to be unduly prejudicial. Globe Soap Co. *v. A. & S. Ry. Co.* 25 (29).
- La Crosse, Wis.: Rate on bananas from New Orleans, La., to La Crosse, Wis., not shown unreasonable, unduly discriminatory, or unduly prejudicial as compared with rates to Dubuque, Iowa, and other points. Burns *v. I. C. R. R. Co.* 217 (219).
- Mechanicsburg, Ohio: Sixth-class rate on basic slag from Locust Point, Baltimore, Md., to Mechanicsburg, Ohio, not shown to have been unduly prejudicial as compared with the rate to Springfield, Ohio. Wing Seed Co. *v. B. & O. R. R. Co.* 160 (161).
- Muskogee, Okla.: Ocean-and-rail and all-rail rates on cranberries from points in Atlantic seaboard territory to Muskogee, higher than to Fort Smith, Ark., not shown unreasonable or unduly prejudicial. Goodner-Malone Co. *v. M., O. & G. Ry. Co.* 531 (534).
- New York, N. Y.: Rates on milk and cream and products, c. l. and l. c. l. to New York, Weehawken, Hoboken, and Jersey City, N. J., from points on lines of respondents found unreasonable and unduly prejudicial to producers and shippers from near-by points and unduly preferential to producers and shippers from distant points. Reasonable rates prescribed. Milk and Cream Rates to New York City, 412 (425, 430).
- Philadelphia, Pa.: Rates on milk and cream and products, c. l. and l. c. l., to Philadelphia, Pa., Atlantic City, and Cape May, N. J., and other points, from various points in adjoining states, found unreasonable and unduly prejudicial to shippers and producers from near-by points and unduly preferential to producers and shippers from distant points. Reasonable rates prescribed. Milk and Cream Rates to Philadelphia, Pa. 371 (387).
- Sioux City, Iowa: Rates on cotton-mattress stock from Chickasaw, Okla., to Sioux City, Iowa, not shown unlawfully discriminatory or prejudicial as compared with rates to other points in the same general territory. Friedman *v. C. & N. W. Ry. Co.* 91 (92).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

South Beloit, Ill.: Higher rate on sand and gravel from South Beloit, Ill., to Milwaukee, Wis., than to Chicago, Ill., not shown unduly prejudicial. *Great Western Sand & Gravel Co. v. C., M. & St. P. Ry. Co.* 529 (530).

Union Springs, Ala.: Prejudice caused by the refusal of the defendant to permit compression of cotton at Union Springs, Ala., has been removed by the action of the carrier in providing for the concentration and compression at that point on the same terms as at other points in Alabama. *R. R. Comm. of Alabama v. C. of G. Ry. Co.* 516 (521).

Winona, Minn.: Rates on hogs and cattle from Wisconsin points to Winona, Minn., not found unduly prejudicial compared with rates maintained to Milwaukee. Defendants announced intention at hearing to reduce rates in issue which have since been published. Complaint dismissed without prejudice pending general investigation of rates on live stock and products. *Interstate Packing Co. v. C., M. & St. P. Ry. Co.* 365 (370).

Persons:

Refusal of the Western Union Telegraph Co. to transmit for complainant from New York to points in the United States deferred cable messages originating in South America, upon the same terms as such messages are transmitted for complainant's competitor, subject complainant to unjust discrimination. *Commercial Cable Co. v. W. U. T. Co.* 33 (39).

Allegation that defendants' practice of declaring, modifying, and suspending embargoes without sufficient notice to shippers subjects certain interests at Baltimore to undue prejudice and that thereby denied "reasonable, proper, and equal facilities for the receiving, forwarding, and delivery of grain" not sustained. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (52).

Proposed rates on peddler-car traffic to points in western and northwestern Indiana without an increase in the state rates would give Indiana packers an increased preference. Such a condition can not be too strongly condemned. *C. F. A. Class Scale Case*, 254 (284).

Contract between Rutland Railroad and Stephen C. Millett with respect to the building and maintenance by him of milk-shipping stations for use of shippers of milk to New York from Vergennes and other stations intermediate to Rutland and its refusal to give complainant access to them under reasonable terms or to construct similar buildings for her use on shipments to Boston unduly preferred shippers to New York and unduly prejudiced complainant. *Graustein v. B. & M. R. R.* 393 (404).

As complainant had practically monopolized the lumber-storage space at pier 40, Philadelphia, the Commission points out to the carrier its duty under the law to remove and avoid any cause for complaint of unjust discrimination. *Sheip Mfg. Co. v. B. & O. R. R. Co.* 408 (410).

Rates on anthracite coal from Pennsylvania points to Middletown, N. Y., and delivered by connecting line to complainant's coal yard not found unduly prejudicial as compared with rates on similar shipments to complainant's competitors which do not require such switching. *Wood & Son v. E. R. R. Co.* 587 (588, 589).

Train Service:

Train service furnished complainant by the Rutland Railroad in the transportation of milk to Boston found unduly prejudicial to complainant and unduly preferred complainant's competitors in violation of section 3. *Graustein v. B. & M. R. R.* 393 (401).

PRIVATE CARS.

Proposed withdrawal from participation in tariffs providing for transportation of special passenger and baggage equipment owned by amusement companies, but to continue to furnish and transport such cars under special contract such as are now filed with the Commission with respect to transportation of circuses not justified. *Special Passenger Equipment*, 590 (591, 592).

PROPERTY.

The distinction between the right that the public has in the property of a railroad company in connection with a transportation service to be performed and the control a railroad company has over its property as private property with respect to those who are not demanding a service of transportation has not only been frequently pointed out by the courts but has been carefully sustained. *The Car Peddling Case*, 494 (501).

That a railroad also holds its general railroad property in private right, except as to those who call upon it to perform a service of transportation, has long been an established doctrine. *Id.* (501).

The property of a railroad company in a large sense is its private property and is subject to the same control by it that an individual has over his private property. *Id.* (501).

PROPORTIONAL RATES.

On shipment of fertilizer from Mexico City, Mexico, to Colton, Cal., the proportional rate from Laredo, Tex., to Colton, found justified. Carrier's agent had stated that lower rate, that was in effect when the Rio Grande River crossings were open, would apply. *Olalde y Compañia v. S. P. Co.* 155 (156).

Imported fresh meat moving from shipside, Brooklyn, N. Y., to Jersey City, N. J., *Held*, Not such movement as would entitle shipments to the proportional rate. A proportional rate means a part of or a remainder of a through rate, or it means nothing at all. *Swift & Co. v. E. R. R. Co.* 554 (556).

PROSPERITY.

Both the fiscal year ended June 30, 1916, and the calendar year 1916 were remarkable years in the history of American railroads. *The Fifteen Per Cent Case*, 303 (318).

PUBLIC INTEREST.

Commission can not close its eyes, particularly in the present international situation, to the necessity of making every possible effort to move certain products, including food products, as the immediate needs, foreign or domestic, may demand. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (51).

It has not been established that the public interest will suffer from the cancellation of through routes between points on the S., P. & S., and the U. P. R. R. Co., via Portland, Oreg., as there are available practicable through routes which embrace the entire length of the originating carrier's road. *West Coast Lumber Mfrs. Asso. v. S., P. & S. Ry. Co.* 230 (234).

The Commission is not unmindful of the fundamental and immensely valuable service which the carriers perform in times of peace and even more in times of war. Successful operation of the railways is vital to our national welfare. *The Fifteen Per Cent Case*, 303 (312).

PUBLIC SENTIMENT.

It can not be known to what extent public sentiment may have been influenced by those who could without serious difficulty pass along to others the burden of increased rates. This fact is without significance as a basis for determining the propriety of the proposed rates. The statute does not authorize the Commission to arrive at a decision on the basis of preponderating views. *The Fifteen Per Cent Case*, 303 (316).

PUBLIC SENTIMENT—Continued.

The existing public sentiment and the manner in which the proposals of the carriers have been presented and handled by them indicate a feeling of mutual confidence, which at many times in the past has been regrettably absent. *Id.* (326).

PUBLISHING RATES.

To publish to and from every point in C. F. A. territory rates strictly according to scale and distance would necessitate the compilation of hundreds of thousands of additional distances, and would result in voluminous and complicated tariff publications. *C. F. A. Class Scale Case*, 254 (265).

RAIL-AND-WATER RATES.

Ordinarily rates via rail-and-water routes are maintained at a lower level than via all-rail routes. *The Fifteen Per Cent Case*, 303 (324).

RAILROAD COMPANY.

In certain of its aspects and in a purely illustrative sense a railroad company may be regarded as a manufacturing plant, the output of which is transportation for the public. *The Car Peddling Case*, 494 (500).

RATE COMPARISONS.

Comparisons of rates submitted by the parties are not as helpful as they might be, as many of the rates are not made with particular reference to distance but have been established to meet varying commercial and competitive conditions. *The Northwestern Salt Cases*, 12 (19).

RATE WAR.

Original fares to the Pacific coast were established about 20 years ago, after a rate war. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 436 (439).

RATIO. See REVENUES AND EXPENSES; INVESTMENT.**REASONABLENESS OF RATES.**

While the rates in question do not yield more than reasonable revenue, it does not necessarily follow that the rates are on a reasonable basis. *Milk and Cream Rates to New York City*, 412 (423).

RECONSIGNMENT.

Combination rate on mixed carload of oranges and lemons, from Lordsburg, Cal., consigned to Portland, Oreg., and repeatedly diverted and reconsigned, until it reached Everett, Wash., not found to have been improperly applied. *Randolph Fruit Co. v. S. P. Co.* 65 (66).

Carrier's tariff providing for reconsignment to stations on its line at one-half the rate from the reconsigning point to the new destination found unreasonable to extent they exceeded charges based on the joint through rate in effect from origin to destination, plus a reasonable charge for the reconsignment. Reparation awarded on shipment of ash lumber from Cairo, Ill., to Harvard, Conn., reconsigned to Boston, Mass. *Shafer Lumber Co. v. St. L., I. M. & S. Ry. Co.* 71 (72, 73).

Additional charges for reconsignment from the New Haven yards, Boston to Mystic Wharf, Boston, not found unreasonable, as reconsignment instructions were not placed until at least four days after the arrival of the car. *Id.* (73).

Charges on oats from Gunter, Tex., to Rayne, La., reconsigned from Lafayette, La., after being milled in transit at Sherman, Tex., and rule prohibiting reconsignment at the through rate after expiration of the first 72 hours from the time of arrival of shipment at first destination, not shown unreasonable. *Pittman & Harrison Co. v. St. L., S. F. & T. Ry. Co.* 179 (180).

RECONSIGNMENT—Continued.

On coal from Christopher, Ill., to Purdin, Mo., two routes were available, one via Linneus, over which shipment moved, the other via Milan. Shipment was refused at Purdin and complainant, upon being advised that it had moved via Milan, ordered it reconsigned to Linneus, which involved a back haul, for which the local rate was charged. *Held*, whether this movement be considered one which was authorized or not, there can be no departure from the established rate. No violation of the act shown. *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.* 209 (210).

On shipments of lumber from points in Arkansas and Texas to points in Illinois, the connecting carrier at Thebes, Ill., was instructed to reconsign to Cairo, Ill., at joint rate. As that road did not participate in the joint rate it attempted to return shipment to originating line, which road refused to accept. *Held*, Under tariffs involved, originating line justified in refusing to transport shipment beyond Thebes. *Hilgard Lumber Co. v. C. & E. I. R. R. Co.* 513 (515). Defendant's tariffs should provide for reconsignment on the basis of the joint through rate plus a charge of \$5 for extra services rendered. Charges on lumber from Demopolis, Ala., to Mount Sterling, Ky., diverted to Lexington, Ky., and from there reconsigned to Martinsburg, W. Va., found unreasonable. Reparation awarded. *Watters-Tonge Lumber Co. v. C., N. O. & T. P. Ry. Co.* 575 (576).

REDUCTION IN RATES.**In general:**

The existence of a lower rate over route other than the route of movement and the subsequent reduction of the rate over the route of movement is not sufficient to establish the unreasonableness of the previous rate. *Brunswick-Balke-Collender Co. v. M., M. & S. E. Ry. Co.* 175 (176).

By carriers:

Charges on two carloads of lumber from Willow, Tex., to Wilson, Okla., found to have exceeded legal rate; legal rate found unreasonable to extent it exceeded joint rate subsequently established. Reparation awarded. *Beaumont Timber Co., Ltd., v. I. & G. N. Ry. Co.* 5.

Rate on dried fruit in boxes from San Francisco, Cal., to Aberdeen, S. Dak., found unreasonable to extent it exceeded rate subsequently established. Reparation awarded. *Aberdeen Wholesale Grocery Co. v. C., M. & St. P. Ry. Co.* 23.

Factor of combination rate on news print paper from Brunswick, Me., to Philadelphia, Pa., originating at Livermore Falls, Me., not found unreasonable because of its subsequent reduction by way of Harlem River. *International Paper Co. v. M. C. R. R. Co.* 30 (31).

Rate on empty beer containers from Gary, Ind., to Chicago, Ill., found to have been unreasonable to extent it exceeded prior and subsequently reestablished rate. Reparation awarded. *U. S. Brewing Co. of Chicago v. M. C. R. R. Co.* 67 (68).

Through rate on wool in sacks from Slater, Wyo., to Cleveland, Ohio, found unreasonable to extent that the rate charged for the haul from Slater to the Mississippi River exceeded the rate subsequently established over route of movement. Reparation awarded. *Adams v. C. & S. Ry. Co.* 69 (70).

Present application of actual weights on canned tomatoes might result in charges less than those which accrued on basis of estimated weights, previously in effect, but the voluntary reduction of a rate or basis of charges does not in itself furnish a sufficient reason for awarding reparation. *Ferguson & Son Grocery Co. v. A., B. & A. Ry. Co.* 81 (82).

REDUCTION IN RATES—Continued.

By carriers—Continued.

- Rate on pyrites cinder from Philadelphia, Pa., to Coatesville, Pa., moving by way of Elsmere Junction, Del., found unreasonable to extent it exceeded rate over intrastate route, which basis was subsequently established over route of movement. *Harrison Bros. & Co. v. B. & O. R. R. Co.* 85 (86).
- Rate on cotton mattress stock from Chickasha, Okla., to Sioux City, Iowa, via Des Moines and Council Bluffs, Iowa, found unreasonable to the extent it exceeded rate subsequently established over route via Lincoln, Nebr. Reparation awarded. *Friedman v. C. & N. W. Ry. Co.* 91 (92).
- The voluntary reduction of a rate, supplemented by the willingness of a carrier to make reparation, in the absence of supporting proof, does not necessarily justify an award of reparation. *Fern Glen Distilling Co. v. St. L. & S. F. R. R. Co.* 101 (102).
- Rate on fresh meat from Boston, Mass., to Bangor, Me., at first-class rate, found unreasonable to extent it exceeded third-class rate subsequently established. Reparation awarded. *Swift & Co. v. B. & M. R. R.* 119 (120).
- First-class rate charged on asphaltum-coated cotton fabrics from Selma, Ala., to East Point, Ga., found unreasonable to extent it exceeded subsequently established third-class rate. Reparation awarded. *Valley Creek Cotton Mills Co. v. W. Ry. of Ala.* 123 (124).
- The existence of a lower rate over another route and the subsequent reduction of the rate over the route of movement do not of themselves warrant condemnation of the rate charged. *Globe Lumber Co. v. S., L. B. & S. Ry. Co.* 135 (136).
- On l. c. l. shipment of potatoes from Seeley Creek, N. Y., to Arch Creek, Fla., component of combination rate applied south of Jacksonville, Fla., found unreasonable to extent it exceeded rate subsequently established. *Wilcox v. Erie R. R. Co.* 149 (150).
- Fifth-class combination rate, based on Portland, Oreg., on orchard heaters from Martins Ferry, Ohio, to Medford, Oreg., found unreasonable to the extent the factor from Martins Ferry to Portland exceeded the commodity rate subsequently established. Reparation awarded. *Wheeling Corrugating Co. v. P. Co.* 165 (166).
- Rate on cottonseed oil from Hillsboro, Ala., to Ivorydale, Ohio, found unreasonable to the extent it exceeded the rate subsequently established. Reparation awarded. *Procter & Gamble Co. v. S. Ry. Co.* 177 (178).
- Combination rate on kraut from Austin, Ind., to Cairo, Ill., found unreasonable to extent it exceeded joint rate subsequently established. Reparation awarded. *Scudders Gale Grocer Co. v. S. Ry. Co.* 181 (182).
- Rate on steel rails from St. Francis, Ark., to Memphis, Tenn., found unreasonable to extent it exceeded the rate applicable in the opposite direction, which rate was subsequently established over direction of movement. Reparation awarded. *Zelnicker Supply Co. v. St. L. S. W. Ry. Co.* 185 (186).
- Combination rate on cotton seed from Alachua, Fla., to Quitman, Ga., based on point through which shipment did not move, found unreasonable to extent it exceeded joint rate subsequently established. Reparation awarded. *Empire Cotton Oil Co. v. S. A. L. Ry. Co.* 186 (187).
- Rate on ash logs from Thurman, N. Y., to Wyoming, Pa., found unreasonable. Commodity rate applicable over other route was, with slight increase, subsequently established over route of movement. Reparation awarded. *Wyoming Shovel Works v. D. & H. Co.* 197 (198).

REDUCTION IN RATES—Continued.

By carriers—Continued.

Charges on wood-pulp board packing cases, k. d., flat, from Milwaukee, Wis., to Oregon, Ill., at sixth-class rate found unreasonable to the extent that they exceeded the subsequently established commodity rate. Reparation awarded. *Kieckhefer Box Co. v. C., M. & St. P. Ry. Co.* 205 (206).

Joint fifth-class rate on gasoline from Corsicana, Tex., to Gillet, Wis., via Chicago, Ill., found unreasonable to the extent it exceeded combination commodity rate which was in effect following cancellation of the joint rate. Reparation awarded. *Union Petroleum Co. v. T. & B. V. Ry. Co.* 213 (214).

Class B rate on sorghum cane from Sallisaw, Okla., to South Fort Smith, Ark., found unreasonable to the extent it exceeded commodity rate subsequently established and applicable at time of movement over other route. Reparation awarded. *Best-Clymer Mfg. Co. v. A. C. R. R. Co.* 220.

Distance commodity rate on ice from Paducah, Ky., to Martin, Tenn., not found unreasonable as compared with lower specific commodity rate subsequently established. *Paducah Board of Trade v. N., C. & St. L. Ry.* 359 (360).

Rates on hogs and cattle from points in Wisconsin to Winona, Minn., alleged unreasonable and discriminatory. At hearing defendants announced intention of reducing rates in issue and same have since been published. *Held*, Rates now in effect not shown unreasonable or discriminatory. *Interstate Packing Co. v. C., M. & St. P. Ry. Co.* 365 (370).

Rates on strawboard boxes from St. Louis, Mo., Baltimore, Md., and Vincennes, Ind., to Sapulpa, Okla., found unreasonable to extent the rate from St. Louis exceeded rate subsequently established, and the rates from Baltimore and Vincennes to extent the factor applicable beyond East St. Louis, Ill., exceeded factor subsequently established. Reparation awarded. *Schram Glass Mfg. Co. v. St. L. & S. F. R. R. Co.* 465 (466).

Combination rate on lumber from Hosford, Fla., to Pensacola, Fla., for export, found unreasonable to the extent it exceeded subsequently established joint rate. Reparation awarded. *Graves Bros. Co. v. A. N. R. R. Co.* 470 (472).

Domestic rate assessed on mahogany lumber from Louisville, Ky., to Pensacola, Fla., for export, found unreasonable to the extent it exceeded export rate subsequently applicable. Reparation awarded. *Mengel & Bro. Co. v. L. & N. R. R. Co.* 545 (546).

Class rate on imported fresh meat from ship side, Brooklyn, N. Y., to Jersey City, N. J., not found unreasonable as compared with commodity rate subsequently established. *Swift & Co. v. Erie R. R. Co.* 554 (556).

Commodity rate on rubblestone from Granite Quarry, N. C., to Wyndmoor, Pa., not shown unreasonable as compared with rate subsequently established. *Harris Granite Quarries Co. v. S. Ry. Co.* 561 (562).

The subsequent reduction of the rate is insufficient to show that the rate on inedible tallow and grease from Spokane, Wash., to Chicago, Ill., was unreasonable. *Stanton Co. v. N. P. Ry. Co.* 583 (584).

By Commission:

Defendants ordered to maintain rates on salt in carloads from Portland, Oreg., and Seattle and Tacoma, Wash., to points in Washington, Idaho, Montana, and Oregon, where movement is interstate, not in excess of the Class D rates. *The Northwestern Salt Cases*, 12 (19).

Rate on logs in carloads from Chaffee, Mo., to Cleveland, Ohio, found unreasonable. Reparation awarded and reasonable maximum rate prescribed. *Kundtz Co. v. St. L. & S. F. R. R. Co.* 56 (59).

REDUCTION IN RATES—Continued.

By Commission—Continued.

Rates on live stock in carloads from Carrier, Covington, Goltry, Ames, Dacoma, and Cold Springs, Okla., to Wichita, Kans., found unreasonable to extent they exceeded rates prescribed in *Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160. Reduction ordered and reparation awarded. *Brittain Bros. v. St. L. & S. F. R. R. Co.* 87 (90).

Combination rate on cross ties from Lewisburg and Edwards, Ky., to Broadford Junction, Pa., found unreasonable to the extent it exceeded joint rate in effect on lumber, which rate is found reasonable for the future—Reparation awarded. *Harmount v. L. & N. R. R. Co.* 162.

Rates on milk and cream and products, c. l. and l. c. l., to Philadelphia, Pa., Atlantic City and Cape May, N. J., and other points, from various points in adjoining states, which represent increases, found unreasonable and unduly prejudicial to shippers and producers from near-by points and unduly preferential to producers and shippers from distant points. Reasonable rates prescribed on mileage basis. *Milk and Cream Rates to Philadelphia, Pa.* 371 (387).

Rates on milk and cream and products, c. l. and l. c. l., to New York, Weehawken, Hoboken, and Jersey City, N. J., from points on lines of respondents found unreasonable and unduly prejudicial. Rates based on blocks of 10 miles prescribed. *Milk and Cream Rates to New York City*, 412 (429, 430).

Sixth-class rate on limestone from Keeport, Ind., to Paulding, Ohio, found unreasonable to the extent it exceeded the commodity rate herein found reasonable. Reparation awarded. *German American Sugar Co. v. C. N. R. R. Co.* 475 (476).

Sixth-class rate on slag and refuse from Chester, Pa., to Carneys Point, N. J. found unreasonable. Reasonable commodity rate prescribed. Reparation awarded. *Du Pont de Nemours Powder Co. v. P., B. & W. R. R. Co.* 479 (480).

Rate on lemons from California points to Miles City, Mont., found unreasonable and reasonable rate prescribed. Reparation awarded. *Gamble-Robinson Fruit Co. v. S. P. Co.* 578 (580).

REFRIGERATION. *See also* ICING.

Charges on ice used to preserve shipment of lard from Kansas City, Mo., to Saltillo, Mex., found legally applicable but unreasonable to the extent they exceeded the factor applicable beyond Laredo, Tex. Reparation awarded. *Morris & Co. v. I. & G. N. Ry. Co.* 223 (224).

Shipment of peaches from Mountairburg, Ark., to St. Louis, Mo., reconsigned to Detroit, Mich., was reiced at East St. Louis, Ill. Contended that tariff provided for charges only when reicing was made at point where shipment was held on shipper's order and that shipment was not so held at East St. Louis. *Held*, Refrigeration and reicing charges not shown unreasonable. *Harmon & Evans v. St. L. & S. F. R. R. Co.* 581 (582).

REFRIGERATOR CARS.

Charge of \$5 per car assessed in addition to the transportation rates, on potatoes from Hamilton, Mont., to Seattle, Wash., was collected without tariff authority. Reparation awarded. *Vallance v. N. P. Ry. Co.* 131 (132).

Former finding that rental charge for insulated or refrigerator cars on shipments of potatoes from Minnesota and Wisconsin to Oklahoma was properly assessed and not unreasonable, adhered to, on rehearing. The charge was neither in addition to nor a substitute for any rates, but solely for the use of a particular type of equipment. *Hale-Halsell Grocery Co. v. M., K. & T. Ry. Co.* 523 (526).

REFRIGERATOR CARS—Continued.

Tariff governing shipment of peaches from Sale Creek, Tenn., to Cincinnati, Ohio, reconsigned to Dayton, Ohio, provided for minimum loads based on length of car. *Held*, Dimensions specified refer to the outside measurements. Charges assessed on 40-foot refrigerator car not shown illegal or unreasonable. *Markley & Co. v. C., N. O. & T. P. Ry. Co.* 559 (560).

REFUND. *See also* **INFORMAL COMPLAINT.**

Refund of charges collected on certain shipments, on basis of rate subsequently found reasonable by Commission, made prior to hearing, resulted in undercharges. Reparation authorized on basis of rate found reasonable. *International Paper Co. v. M. C. R. R. Co.* 453 (454).

REFUSED SHIPMENT.

On shipments of lumber from points in Arkansas and Texas, to points in Illinois, the connecting carrier at Thebes, Ill., was instructed to consign to Cairo, Ill., at joint rate. As that road did not participate in the joint rate it attempted to return shipment to originating line, which road refused to accept. *Held*, Under tariffs involved, originating line justified in refusing to transport shipment beyond Thebes. *Hilgard Lumber Co. v. C. & E. I. R. R. Co.* 513 (515). Shipment of lumber refused at Moark, Ark., for transportation to Cypress, Ill., as carrier had issued an embargo in order to get benefit of long haul. Shipment moved to Dupu, Ill., reconsigned to Danville, Ill. *Held*, Such embargo does not relieve carrier from duty to furnish transportation. Carrier should have accepted and forwarded shipment as requested. Reparation awarded. *Powell-Myers Lumber Co. v. St. L., I. M. & S. Ry. Co.* 594 (596).

REHEARING. *See also* **SUPPLEMENTAL REPORT.**

Defendant failed to comply, in certain respects, with order of original report in not providing to complainant the same use of river warehouse and incline as to its competitor, resulting in an undue prejudice that must be removed. *Cumberland Transportation Co. v. C., N. O. & T. P. Ry. Co.* 444 (446).

Upon rehearing, differentials proposed by defendants in rates on uncompressed cotton from certain points in Arkansas and Missouri to Memphis and St. Louis approved, with certain exceptions. *City of Memphis v. C., R. I. & P. Ry. Co.* 487 (492).

Former finding that rental charge of \$5 for insulated or refrigerator cars on shipments of potatoes from Minnesota and Wisconsin to Oklahoma was properly assessed and not unreasonable, adhered to, on rehearing. *Hale-Halsell Grocery Co. v. M., K. & T. Ry. Co.* 523 (526).

Former finding that charges on corn and oats from points in South Dakota, Minnesota, and Iowa, to Kansas destinations stopped in transit at Kansas City Mo., were legally assessed, as the tariffs of the defendant did not authorize transit at industries not reached by its tracks, affirmed on rehearing. *Moore-Seaver Grain Co. v. U. P. R. R. Co.* 562 (563).

REICING.

Shipment of peaches from Mountainburg, Ark. to St. Louis, Mo., reconsigned to Detroit, Mich., was reiced at East St. Louis, Ill. Contended that tariff provided for charges only when reicing was made at point where shipment was held upon shipper's order and that shipment was not so held at East St. Louis. *Held*, Refrigeration and reicing charges not shown unreasonable. *Harmon & Evans v. St. L. & S. F. R. R. Co.* 581 (582).

RELATIONSHIP OF RATES.

Rate relationships long maintained may not be lightly disturbed, but where they are not justifiable as a matter of law the Commission can not require their continuance. *C. F. A. Class Scale Case* 254 (286).

RELATIONSHIP OF RATES—Continued.

Rates on excelsior and excelsior pads from Green Bay and Marinette, Wis., to Chicago, C. F. A., southern, and trunk line territories, not found unreasonable except to the extent that the class-rate relationship as between excelsior and excelsior pads has not been observed in the commodity rate adjustment. *Marinette-Green Bay Mfg. Co. v. I. C. R. R. Co.* 507 (509).

RELATIVE RATES. *See also* PREFERENCES AND PREJUDICES (LOCALITIES).

Arizona points: One-way first-class and one-way second-class passenger fares from points on and east of the Missouri River, etc., to points in the State of Arizona, not found unreasonable as compared with similar fares to terminal points in California, Oregon, and Washington, and to intermediate points. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 436 (443).

Arlington, Ga.: Present rates on coal from certain points in Alabama and Kentucky to Arlington, Ga., not shown unreasonable or unduly prejudicial as compared with rates to Cuthbert and other Georgia points. *Arlington Cotton Oil Co. v. C. of G. Ry. Co.* 188 (190).

Brunswick, Me.: Rate on news print paper from Livermore Falls, Me., through Brunswick, Me., to Philadelphia, Pa., compared with rates on news print paper from various points in New York to Philadelphia. *International Paper Co. v. M. C. R. R. Co.* 30 (32).

Chaffee, Mo.: Rates on logs from Chaffee to Cleveland, Ohio, compared with rates on logs between points in Ohio, Indiana, Illinois, and Pennsylvania, based on the so-called C. F. A. log scale. *Kundtz Co. v. St. L. & S. F. R. R. Co.* 56 (58).

Fort Wayne, Ind.: Fifth-class rate on cottonseed oil from Fort Wayne Ind., to Ivorydale, Ohio, not found unreasonable as compared with a commodity rate from Chicago, Ill., and Milwaukee, Wis., that was equal to the sixth-class rate from those points. *Rub-No-More Co. v. C., H. & D. Ry. Co.* 484 (485).

Harrisville and Newton Falls, N. Y.: Rate of \$2.10 per ton on bituminous coal from Pennsylvania mines to Harrisville and Newton Falls, N. Y., not shown unreasonable or unduly prejudicial as compared with the rate to Watertown, Carthage, and Massena Springs, N. Y. *Diana Paper Co. v. P. R. R. Co.* 157 (159).

High Hill, Mo.: Rate on fire clay from High Hill, Mo., to Ottawa, Ill., not shown unreasonable as compared with rate from Mexico, Vandalia, and Fulton, Mo., contiguous points. *Chicago Retort & Fire Brick Co. v. Wabash Ry. Co.* 61 (62).

Hosford, Fla.: Rate on lumber from Hosford, Fla., to Pensacola, Fla., compared with rates to Jacksonville and Fernandina, Fla., and Savannah, Ga. *Graves Bros. Co. v. A. N. R. R. Co.* 470 (471).

Ivorydale, St. Bernard, and Cincinnati, Ohio: Rates on cottonseed oil, soap stock, tank bottoms, and inedible tallow from Arkansas, Louisiana, Missouri, Oklahoma, and Texas points compared with rates from Monroe, Alexandria, and Shreveport, based on mileage scale. *Globe Soap Co. v. A. & S. Ry. Co.* 25 (29).

La Crosse, Wis.: Rate on bananas from New Orleans, La., to La Crosse, Wis., not shown unreasonable as compared with the rates to other points. *Burns v. I. C. R. R. Co.* 217 (219).

Marinette, Wis.: Rates on excelsior and excelsior pads from Marinette to trunk line territory should not exceed rates on the same commodity from Green Bay, Wis. *Marinette-Green Bay Mfg. Co. v. I. C. R. R. Co.* 507 (513).

New York, N. Y.: Rates on milk and cream to New York City compared with rates to Boston, Philadelphia, and to Chicago and other points in C. F. A. territory. These comparisons fall short of establishing that rates to New York are unreasonable, as conditions are entirely different. *Milk and Cream Rates to New York City*, 412 (421).

RELATIVE RATES—Continued.

Paducah, Ky.: Distance commodity rate on ice from Paducah, Ky., to Martin, Tenn., not shown unreasonable as compared with rates from and to other points. *Paducah Board of Trade v. N., C. & St. L. Ry.* 359 (360).

Paulding, Ohio. Sixth-class rate on limestone from Keepport, Ind., to Paulding, Ohio, compared with commodity rate on crushed stone from points in Indiana to points in Ohio, and from points in Illinois to points in Indiana. *German American Sugar Co. v. C. N. R. R. Co.* 475 (476).

Portland, Oreg., etc.: Rates on salt from Portland, Oreg., Seattle and Tacoma, Wash., to points in Washington, Idaho, Montana, and Oregon, interstate, compared with rates from Detroit, Mich., Kansas producing points, and various other points. *The Northwestern Salt Cases*, 12 (18).

Portland, Oreg.: Rate on gypsum plaster from Nephi, Utah, to Portland, Oreg., not found unreasonable compared with rates on same commodity from Arden, Mound House, and Reno, Nev., and Gypsum, Oreg. *Nephi Plaster & Mfg. Co. v. D. & R. G. R. R. Co.* 433 (434).

Vincennes, Ind.: Certain rates on corn, which represent advances, from stations in Illinois located on the B. & O. S. W. R. R. to Vincennes, Ind., alleged unreasonable as compared with rates from same points of origin to St. Louis, Cincinnati, Springfield, Louisville, and Lawrenceburg. Advances found justified in part. *Old Vincennes Distillery Co. v. B. & O. S. W. R. R. Co.* 447 (452).

Wyndmoor, Pa.: Commodity rate on rubblestone from Granite Quarry, N. C., to Wyndmoor not shown unreasonable as compared with rate to Philadelphia, Pa., which rate was subsequently established to Wyndmoor. *Harris Granite Quarries Co. v. S. Ry. Co.* 561 (562).

RENTAL CHARGES.

Former finding that rental charge of \$5 for insulated or refrigerator cars on shipments of potatoes from Minnesota and Wisconsin to Oklahoma was properly assessed and not unreasonable, adhered to on rehearing. The charge was neither in addition to nor a substitute for any rates, but solely for the use of a particular type of equipment. *Hale-Halsell Grocery Co. v. M., K. & T. Ry. Co.* 523 (526).

RESTORED RATES.

Rate on empty beer containers from Gary, Ind., to Chicago, Ill., found to have been unreasonable to extent it exceeded prior and subsequently reestablished rate. Reparation awarded. *U. S. Brewing Co. of Chicago v. M. C. R. R. Co.* 67 (68).

Restored transit service, through inadvertence, did not apply on shipments going beyond certain junctions. Charges on corn milled into gluten feed at Clinton, Iowa, found unreasonable. Reparation awarded. *Clinton Sugar Refining Co. v. C., B. & Q. R. R. Co.* 211 (212).

Rate on news printing paper from Livermore Falls, Me., to Boston, Mass., for export, found unreasonable to extent it exceeded prior and subsequently reinstated rate. Reparation awarded. *International Paper Co. v. M. C. R. R. Co.* 453 (454).

Combination rates on lumber from De Ridder, La., to Oakland and Wiotia, Iowa, and from Lake Charles, La., to Marne, Iowa, found unreasonable to extent the factor applicable beyond Fulton, La., exceeded that formerly in effect and subsequently reestablished. Reparation awarded. *Hudson River Lumber Co. v. L. & P. Ry. Co.* 571 (572).

RESTORED SERVICE.

Concentration and compression service on cotton at Lawton, Okla., withdrawn and subsequently reestablished, found to have resulted in unreasonable charges. *Bulley & Son v. St. L. & S. F. R. R. Co.* 171 (172).

RESTRICTED RATES.

If defendants intended to restrict the commodity rate to electrical machinery that generates electricity, it should have done so in clear and unequivocal terms. *Held*, That the rate was not so restricted, and should have applied. *Otis Elevator Co. v. N. Y. C. R. R. Co.* 201 (202).

RETROACTIVE.

The Commission has repeatedly refused to sanction the retroactive application of a transit arrangement unless to remove an unlawful discrimination. *Burritt Co. v. C. P. Ry. Co.* 195 (196).

If reparation was awarded and the new rule for future shipments applied retroactively to past shipments, the Commission would be unable to require that the carriers' charges on the basis of the new minimum should be collected as a prerequisite to awarding damages on the basis of the new charge. *Arlington Heights Fruit Exchange v. S. P. Co.* 248 (250).

RETURNED SHIPMENTS.

Rate on returned shipment of agricultural implements from Carmel, Ind., to Plano, Ill., which was held five months by consignee, not found unreasonable. Tariff provision applicable to return of shipments applied only to shipments not accepted by consignee at destination. *Independent Harvester Co. v. C., I. & L. Ry. Co.* 151 (152).

REVENUES AND EXPENSES. See also EARNINGS.

The ratio of maintenance expenditures to total operating revenues in the western district for the fiscal year 1916 was less than for the average of the years 1914 and 1915; and this outlay has not been excessive, either relatively or absolutely. *The Fifteen Per Cent Case*, 303 (318).

Tables showing the average operating revenue per mile of road; United States; Eastern, Southern, and Western districts—Class I carriers by rail. *Id.* (342-346).

Comparison of tons of revenue freight originating on the lines of carriers having operating revenues in excess of \$100,000 per annum, during the year ended June 30, 1916, with those for the year ended June 30, 1913, the best prior year with respect to amount of freight carried. *Id.* (346).

Ratio of operating expenses to operating revenues. *Id.* (347).

Ratio of groups of operating expenses to operating revenues. *Id.* (350).

Ratio of maintenance of way and structures, equipment; other operating expenses to operating revenues. *Id.* (351).

Passenger traffic and revenue per unit. *Id.* (352).

Ratio of taxes to operating revenues. *Id.* (353).

Summary of operating expenses and revenues, per mile of road operated, from July, 1916, to April, 1917. *Id.* (354-355).

Earnings and expenses of the milk and cream business on the Philadelphia division of the Pennsylvania Railroad for year ended December 31, 1914. *Milk and Cream Rates to Philadelphia, Pa.*, 371 (380-381).

ROUTES. See also CIRCUITOUS ROUTES.

Traffic from the southwest to Chicago and Cincinnati may or may not pass through central freight association territory depending on the river crossing through which it moves. *Globe Soap Co. v. A. & S. Ry. Co.* 25 (26).

No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of the fact that intermediate rates over another route would make a lower charge; nor does it raise a presumption of undue prejudice. *Kinnear Mfg. Co. v. P., C., & St. L. Ry. Co.* 74 (75).

ROUTES—Continued.

Joint sixth-class rate of \$1.40 on pyrites cinder from Philadelphia, Pa., to Coatesville, Pa., interstate, found unreasonable to extent it exceeded commodity rate of 60 cents in effect over intrastate routes. Intrastate rates subsequently advanced to 63 cents, which rate was also established over route of movement. Reparation awarded. *Harrison Bros. & Co. v. B. & O. R. R. Co.* 85 (86).

The existence of a lower rate over another route and the subsequent reduction of the rate over the route of movement do not of themselves warrant condemnation of the rate charged. *Globe Lumber Co. v. S., L. B. & S. Ry. Co.* 135 (136); *Brunswick-Balke-Collender Co. v. M. M. & S. E. Ry. Co.* 175 (176).

Charges on tenpins from Big Bay, Mich., to Boston, Mass., shipped over route through Canada, not shown unreasonable where lower rate applied over route wholly in the United States. *Brunswick-Balke-Collender Co. v. M. M. & S. E. Ry. Co.* 175 (176).

Rate charged on building brick from Buffville, Kans., to Chappell, Nebr., can not be condemned because of a lower rate over another route. If no routing had been specified, or route taking lower rate designated, damages alleged could have been avoided. *Sunderland Bros. Co. v. M. P. Ry. Co.* 193 (194).

Rates on ash logs from Thurman, N. Y., to Wyoming, Pa., found unreasonable to the extent it exceeded special commodity rate applicable over other route, which rate through inadvertence did not apply over route of movement but was subsequently established with slight increase. Reparation awarded. *Wyoming Shovel Works v. D. & H. Co.* 197 (198).

Class rate found unreasonable to extent it exceeded commodity rate in effect over other route and subsequently established via route of movement. *Best-Clymer Mfg. Co. v. A. C. R. R. Co.* 220.

Combination rate on second hand sawmill machinery from Nettleton, Ark., to Moorhead, Miss., moving as instructed, not found unreasonable or unduly prejudicial as compared with lower joint rate over other route. *Dulweber Co. v. Y. & M. V. R. R. Co.* 549 (550).

At the time of shipment of brick from Brazil, Ind., to York, Nebr., via Peoria, Ill., a lower rate applied via East St. Louis, Ill., but the existence of lower rate over route other than the route of movement is not sufficient to establish the unreasonableness of the higher rate. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 584 (586).

ROUTING INSTRUCTIONS.

Instructions specified carriers forming a complete route; initial carrier not at fault in forwarding shipment over route specified instead of cheaper route formed by same carriers with an additional carrier intervening. *Austin Powder Co. v. W. & L. E. R. R. Co.* 199 (200).

SALESROOM. *See* EQUIPMENT.

SCALE RATES.

Proposed new system of class and commodity rates in C. F. A. territory found not justified. Modifications suggested. *C. F. A. Class Scale Case*, 254 (285, 286).

SECTION 1. *See* TRANSPORTATION.SECTION 3. *See* PREFERENCES AND PREJUDICES.SECTION 4. *See also* LONG-AND-SHORT HAUL; THROUGH AND LOCAL.

Departures from the provisions of the fourth section, which are covered by appropriate fourth section applications, do not of themselves constitute a basis for an award of reparation. *City of Clarksdale, Miss., v. I. C. R. R. Co.* 108 (110).

SECTION 4—Continued.

As the lower rate in effect from the farther distant point did not apply over the route of movement, the rate charged did not involve any departure from or violation of the fourth section. *Sunderland Bros. Co. v. M. P. Ry. Co.* 193 (194).

Fourth-section violations created by cancellation of through rates on lumber between points on the S., P. & S. Ry. and the U. P. R. R. said to be result of inadvertence. Defendants state they will be removed. *West Coast Lumber Mfrs. Assn. v. S., P. & S. Ry. Co.* 230 (235).

SECTION 15.

Under section 15 the Commission has no power to establish or to continue in force voluntarily established through routes and joint rates that require the carrier without its consent to embrace less than the entire length of its road, unless to do so would make such route unreasonably long. *West Coast Lumber Mfrs. Assn. v. T. E. R. R. Co.* 227 (229).

SERVICE.

Carrier may not legally offer a transportation service to a shipper or perform the service for him except under definite tariff authority. *The Car Peddling Case*, 494 (500).

SHORT LINE.

Charges on interstate traffic to and from industries of complainants located on rails of the Indiana Northern Railway found unreasonable to extent they exceeded rates on similar traffic to and from industries and team tracks on the lines of defendants other than the Indiana Northern at South Bend. Reparation awarded. *Oliver Chilled Plow Works v. N. Y. C. R. R. Co.* 356 (358).

SLAG.

Basic slag is a by-product obtained in the manufacture of steel and is imported from Europe. It is used as a basis for fertilizer. *Wing Seed Co. v. B. & O. R. R. Co.* 160.

SPECIAL EQUIPMENT.

Proposed withdrawal from participation in tariffs providing for transportation of special passenger and baggage equipment owned by amusement companies, but to continue to furnish and transport such cars under special contracts such as are now filed with the Commission with respect to transportation of circuses not justified. *Special Passenger Equipment*, 590 (591, 592).

STATE AND INTERSTATE.

Joint sixth-class rate of \$1.40 on pyrites cinder from Philadelphia, Pa., to Coatesville, Pa., interstate, found unreasonable to extent it exceeded commodity rate of 60 cents in effect over intrastate routes. Intrastate rates subsequently advanced to 63 cents, which rate was also established over route of movement. Reparation awarded on basis of 60-cent rate. *Harrison Bros. & Co. v. B. & O. R. R. Co.* 85 (86).

Owing to embargo shipments could not move direct, so they were consigned to agent of connecting line at Homestead, Pa., to be forwarded to New York for export. After shipments moved effort was made to have new bills of lading issued, but complainant could not by rebilling the shipment have rendered the intrastate rate applicable. *Waverly Oil Works Co. v. P. R. R. Co.* 216.

The New York Central maintains rates on intrastate shipments of milk and cream to New York on the same basis as on interstate shipments with certain exceptions. *Milk and Cream Rates to New York City*. 412 (415).

Rates on corn from certain points in Illinois on the B. & O. S. W. R. R. to Vincennes, Ind., alleged unreasonable compared with lower intrastate rates. Rates under attack represent increases which are found justified in part. *Old Vincennes Distillery Co. v. B. & O. S. W. R. R. Co.* 447 (452).

STATE RATES.

Commission unable to find that the order of the Wisconsin commission affected only the rates on live stock to Milwaukee and Cudahy and that other Wisconsin intrastate rates were found reasonable. *Interstate Packing Co. v. C., M. & St. P. Ry. Co.* 365 (368).

STIPULATION.

Upon a stipulated statement of facts filed regarding undue prejudice in absorbing switching charges on grain at Milwaukee former report and order modified. Chamber of Commerce of City of Milwaukee *v. C., M. & St. P. Ry. Co.* 432.

STOPPAGE IN TRANSIT. *See* TRANSIT ARRANGEMENTS (STOPPAGE).

STORAGE CHARGES.

At pier 40, Philadelphia, inbound lumber is stored temporarily for complainant's convenience on yard near team tracks. Increased charge of \$3 per carload per month for such storage found justified. *Sheip Mfg. Co. v. B. & O. R. R. Co.* 408 (410).

STORAGE YARD.

The B. & O. has a storage yard at Locust Point, Md., with a capacity of 3,000 cars in addition to its export elevators. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 40 (47).

SUBSEQUENTLY-ESTABLISHED RATE. *See* REDUCTION IN RATES (BY CARRIERS).

SULPHATE OF ALUMINA.

Description of, given. *Powell River Co. v. M. C. R. R. Co.* 482 (483).

SUPPLEMENTAL REPORT. *See also* REHEARING.

Rates on cottonseed oil, soap stock, tank bottoms, and inedible tallow from Arkansas, Louisiana, Missouri, Oklahoma, and Texas to Ivorydale, St. Bernard, and Cincinnati, Ohio, increased in June, 1915, in conformity with findings in *The Five Per Cent Case* 32 I. C. C., 325, held upon further hearing to be unduly prejudicial. *Globe Soap Co. v. A. & S. Ry. Co.* 25 (29).

Divisions of joint rates on bituminous coal from Oak Hills, Colo., and points taking the same rates to stations in Kansas, Nebraska, Missouri, and South Dakota on the A., T. & S. F. the M. P., and the C. & N. W. railways, such joint rates having been prescribed in 39 I. C. C., 94, are hereby prescribed. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 236 (240-247).

Finding in 39 I. C. C., 88, that reparation be denied on precooled and preiced oranges transported from California originating points to destinations in other states and in Canada, reaffirmed on reargument. *Arlington Heights Fruit Exchange v. S. P. Co.* 248 (253).

Previous report and order of the Commission modified upon stipulated statement of facts. The practice of making free delivery at Milwaukee of grain accorded transit at interior points and the refusal to do so on that accorded transit at Milwaukee results in undue prejudice, which must be removed. Chamber of Commerce of City of Milwaukee *v. C., M. & St. P. Ry. Co.* 432.

The petitioner having filed tariffs correcting objectionable practices enumerated in original report. *Held*, The existing service of the Southern Pacific Company-Atlantic steamship lines between New York and New Orleans and between New York and Galveston is in the interest of the public and of advantage to the convenience and commerce of the people. *S. P. Co.'s Ownership of Atlantic S. S. Lines*, 505.

SUSPENDED RATES.

Fifth-class rate on building granite from Hardwick, Vt., to Warren, Ohio, was assessed during period the class basis was under suspension. Lower commodity rate was legally applicable. Reparation awarded. *Woodbury Granite Co. v. St. J. & L. C. R. R. Co.* 214 (215).

SUSPENSION.

The investigation which generally follows the suspension of tariffs in the instant case preceded their suspensions. *The Fifteen Per Cent Case*, 303 (317).

SWITCHING.

Allegation that upon arrival of cars at Boston they were delayed three and one-half hours before being switched to the plant, while competitor's cars were switched to their plants within two hours after arrival, constitutes unjust discrimination, not sustained. *Graustein v. B. & M. R. R.* 393 (405).

The practice of making free delivery at Milwaukee of grain accorded transit at interior points and the refusal to do so on that accorded transit at Milwaukee, results in undue prejudice, which must be removed. Previous report and order modified. *Chamber of Commerce of City of Milwaukee v. C., M. & St. P. Ry. Co.* 432.

Rates on anthracite coal from Pennsylvania points to Middletown, N. Y., and delivered by connecting line to complainant's coal yard not found unduly prejudicial as compared with rates on similar shipments to complainant's competitors which do not require such switching. *Wood & Son v. Erie R. R. Co.* 587 (588, 589).

SWITCHING CHARGES.

On shipment of gravel from Lanesboro, Iowa, to Omaha, Nebr., charges made by the Missouri Pacific for switching movement in Omaha on basis of interstate distance rate, found unreasonable to the extent they exceeded \$6. *Sunderland Bros. Co. v. C. G. W. R. R. Co.* 113 (114).

Charges on interstate traffic to and from industries of complainants, located on rails of the Indiana Northern Railway found unreasonable to extent they exceeded rates on similar traffic to and from industries and team tracks on the lines of defendants other than the Indiana Northern at South Bend. Reparation awarded. *Oliver Chilled Plow Works v. N. Y. C. R. R. Co.* 356 (358).

A trunk line can not be compelled to absorb the switching charges of a connecting line in the absence of discrimination or undue prejudice. *Wood & Son v. Erie R. R. Co.* 587 (589).

Defendant's land lines in this country and the cable lines between this country and Europe which the defendant leases and operates constitute a single system. *Commercial Cable Co. v. W. U. T. Co.* 33.

TANK CARS.

Rate on alcohol in tank cars from Agnew, Cal., to Philadelphia, Pa., and other points, on basis of estimated weight of 6.83 pounds per gallon applied to the marked gallonage capacity of the cars, found unreasonable to the extent it exceeded rate based on actual weight per gallon at full gallonage capacity of the tanks, less an allowance of 5 per cent on such shipments which were loaded in tank cars the domes of which were not of sufficient capacity to cover 5 per cent outage. *Western Grain & Sugar Products Co. v. B. & O. R. R. Co.* 127 (130).

The United States internal-revenue regulations require an allowance of 5 per cent for expansion of alcohol in tank cars. *Id.* (129).

Larger tank car furnished than ordered and charges assessed on capacity of larger car. *Held*, Every consideration of economy, if not of safety, demands the movement of tank cars under full loading. Charges not shown unreasonable. *Lange Soap Co. v. G., H. & S. A. Ry. Co.* 542 (544).

TARIFF RULES.

The Commission by modification of some of its tariff rules is alleged to have abrogated the law, but it is needless to state that nothing has been done by the Commission in violation of any provision of the statute. *The Fifteen Per Cent Case*, 303 (310).

TARIFFS.

Tariffs must be construed according to their language and the intention of the framers is not controlling. *Prairie Oil & Gas Co. v. W. Ry. Co.* 1 (2).

In the interpretation of any tariff, the intention of the framers is not controlling. *Russi & Co. v. O. S. R. R. Co.* 77 (78).

Provision in tariff that freight would be subject to rules and regulations of individual lines relating to car service, switching, reconsignments and storage may not be interpreted as authorizing charge for use of refrigerator cars, *Vallance v. N. P. Ry. Co.* 131 (132).

On mixed carload shipments of canned hominy and canned sauerkraut, sauerkraut was not specifically included in classification but was included in commodity descriptions. *Held*, That the carload rate on canned goods was properly applicable. *McKay & Morgan v. L. & N. R. R. Co.* 146 (148).

Proposed tariffs printed in the rough and did not comply with the regulations as to construction, printing, etc., awaiting the Commission's decision. *C. F. A. Class Scale Case*, 254 (255).

The word "pebbles" in the exception to the classification quoted was unrestricted, and iron pebbles in bulk in carloads were entitled to the sixth-class rate, and under the analogous-article rule nut punchings were entitled to the same rate. *Chicago Portland Cement Co. v. I. C. R. R. Co.* 477 (478).

Tariffs are to be construed according to their language and the intention of the framers is not controlling. *Id.* (478).

Tariffs are not the proper place for rules prohibiting the practice of car peddling; on the other hand the privilege, if accorded to shippers, seems to be lawful only when provided for in the tariffs. *The Car Peddling Case*, 494 (502).

Rule 4 (g), *Tariff Circular 18-A*, requires that every tariff clearly state how the rates shall apply, but it is not required that one tariff should explain the application of another tariff. *Hale-Halsell Grocery Co. v. M., K. & T. Ry. Co.* 523 (525).

Tariff providing for track storage charges on potatoes at Kansas City, Mo., shipped from Minnesota points, complies with rules 4 (g) and 4 (h), of *Tariff Circular 18-A*, as it is clear in its application, precise in its terms, and the particular charges which apply appear on the same page of the tariff with the provision. *Famechon Co. v. C., B. & Q. R. R. Co.* 598 (599).

TAXES.

Table showing ratio of taxes to operating revenues and property investment. *The Fifteen Per Cent Case*, 303 (353).

THREE-LINE HAUL.

Disagreement as to divisions arose out of conflicting ideas as to which carrier or carriers should bear the shrinkage caused by the participation of a third line in traffic previously involving a two-line haul. Divisions prescribed. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 236.

In computing distances for three-line hauls between points in C. F. A. territory, any intermediate line was used in determining the short route, except that no such route was used which would involve short hauling one of the carriers therein unless divisions were already in effect. *C. F. A. Class Scale Case*, 254 (263).

THROUGH AND LOCAL.

Joint class rate on corn from Lawton and Ricketts, Iowa, to Kansas City, Mo., found to have been unreasonable to the extent it exceeded aggregate of intermediate commodity rates, contemporaneously in effect. Reparation awarded. *Nye Schneider Fowler Co. v. C. & N. W. Ry. Co.* 115 (116).

THROUGH AND LOCAL—Continued.

Through class rate applicable on shipments of gypsum from Rito, N. Mex., to Riverside, Cal., in excess of the aggregate of the intermediate rates is in violation of the fourth section and should be immediately rectified. *Riverside Portland Cement Co. v. A., T. & S. F. Ry. Co.* 139 (140).

Second-class joint rate on brooms from Wichita, Kans., to Sioux City, Iowa, found unreasonable to the extent it exceeded the aggregate of intermediates in effect to and from Omaha, Nebr. Reparation awarded. *Wichita Traffic Bureau v. A., T. & S. F. Ry. Co.* 143 (145).

Through rate on staves from Womble, Ark., to Toronto, Canada, found unlawful to extent it exceeded the aggregate of the intermediate rates to and from Thebes, Ill. Reparation awarded. *Hollingshead & Blei Co. v. St. L., I. M. & S. Ry. Co.* 153 (154).

Joint rate and minimum weight on cement from Iola, Kans., to Union Star, Helena, and Cosby, Mo., found unreasonable to the extent that they exceeded the aggregate of intermediate rates and minima to and from St. Joseph, Mo. Reparation awarded. These unlawful departures from the fourth section should be promptly corrected. *Iola Portland Cement Co. v. M., K. & T. Ry. Co.* 167 (168).

Joint rate on wine from New Orleans, La., originating in Germany, to Sheboygan, Wis., found unreasonable to the extent it exceeded the aggregate of intermediates in effect to and from Milwaukee, Wis. Reparation awarded. *De Wilde & Sons v. C. & N. W. Ry. Co.* 207 (208).

Contention that rate on imported fresh meat from ship side, Brooklyn, N. Y., to Jersey City, N. J., was unreasonable to extent it exceeded aggregate of intermediate rates untenable, as one factor of the rates was not applicable to this traffic. *Swift & Co. v. Erie R. R. Co.* 554 (556).

THROUGH RATES. See MESSAGES.**THROUGH ROUTES AND JOINT RATES.**

Reestablishment of through routes and joint rates sought between points on the Tacoma Eastern R. R. and points east of the Missouri River via the N. P. Ry. *Held*, Originating line entitled to long haul; also, Commission has no power to establish or continue in force a through route embracing substantially less than the entire length of carrier's own line. *West Coast Lumber Mfrs. Asso. v. T. E. R. R. Co.* 227 (229).

Complainants sought reestablishment of through routes and joint rates between points on the S., P. & S. Ry. and the U. P. R. R. Co., via Portland. *Held*, The existing routes have not been shown to be inadequate or unreasonably long, and the cancellation of joint rates has been justified. *West Coast Lumber Mfrs. Asso. v. S., P. & S. Ry. Co.* 230 (235).

The Commission is not empowered to require any company, without its consent, to embrace in a through route substantially less than the entire length of its road, so would not be warranted in ordering the reestablishment of the canceled routes, thereby depriving carrier of a haul of 400 miles. *Id.* (234).

TOLERANCE. See WEIGHT.**TON-MILE REVENUE.**

Bananas: Ton-mile revenue on bananas from New Orleans, La., to La Crosse, Wis., and other points shown. *Burns v. I. C. R. R. Co.* 217 (218).

Brick: Ton-mile yield on brick from Brazil, Ind., to Monticeth, Iowa, and York, Nebr., shown under former and present rates. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 584 (585).

TON-MILE REVENUE—Continued.

Brooms: Ton-mile earnings on brooms from Wichita, Kans., to Omaha, Nebr., and Sioux City, Iowa, shown. *Wichita Traffic Bureau v. A., T. & S. F. Ry. Co.* 143 (144).

Clay, fire: Rate on fire-clay from High Hill, Mo., to Ottawa, Ill., yielding ton-mile earnings of 4.7 and 3.6 mills, not shown unreasonable. *Chicago Retort & Fire Brick Co. v. W. Ry. Co.* 61 (62).

Coal: Ton-mile earnings on bituminous coal from Cairnes, Ky., to Dry Branch, Ga., compare favorably with earnings by other rates from Alabama mines to competitive points in Georgia and Alabama. *Freight Bureau, Chamber of Commerce, Macon, Ga., v. M., D. & S. R. R. Co.* 83 (84).

Coal: Ton-mile revenue on coal to Clarksdale, Miss., from Illinois and Kentucky mines shown. *City of Clarksdale, Miss., v. I. C. R. R. Co.* 108 (110).

Coal: Ton-mile revenue on bituminous coal from Pennsylvania mines to Harrisville and Newton Falls, N. Y., shown. *Diana Paper Co. v. P. R. R. Co.* 157 (159).

Coal: Ton-mile earnings on coal at present rates, from Birmingham, Ala., and Coal Creek, Tenn., to Arlington, Ga., compared with earnings to other Georgia points. *Arlington Cotton Oil Co. v. C. of G. Ry. Co.* 188 (189).

Culverts: Conceding that the ton-mile earnings on culverts from Portland, Oreg., to Rigby, Idaho, materially exceeded the average earnings of all the carriers operating in the same general territory, it does not necessarily follow that the rate charged was unreasonable. *Portland Traffic & Transp. Asso. v. O.-W. R. R. & N. Co.* 410 (411).

Flour: Ton-mile earnings on flour from Williston, N. Dak., to Seattle, Wash., under an assumed division of joint rate from Williston to San Francisco, Cal., compared with other states. This comparison of ton-mile earnings under an assumed division of a rate is of little value and does not demonstrate the unreasonableness of the joint rate assailed. *Williston Mill Co. v. G. N. Ry. Co.* 137 (138).

Rails: Ton-mile yield on steel rails from St. Francis, Ark., to Memphis, Tenn., at present rate is in line with rates from other points in the same territory. *Zelnicker Supply Co. v. St. L. S. W. Ry. Co.* 185.

Rails: Ton-mile yield on new steel rails from East St. Louis, Ill., to Manitowoc, Wis., shown. *Zelnicker Supply Co. v. S. Ry. Co.* 225 (226).

Track, portable: Ton-mile yield on portable track and emigrant outfit from Winslow, Ariz., to Acme, Cal., shown. *Acme Cement Plaster Co. v. A., T. & S. F. Ry. Co.* 551 (552).

Two-Line Haul: The ton-mile yield of slag for two-line haul from South Bethlehem, Pa., to Philadelphia, Pa., compared with that for one-line haul. *National Slag Co. v. L. V. R. R. Co.* 125 (126).

TRACK STORAGE.

Track storage and demurrage charges on refused shipments of potatoes at Kansas City, Mo., shipped from various points in Minnesota, not shown unreasonable because carrier's agent failed to notify consignor of such refusal as requested in bill of lading. *Famechon Co. v. C., B. & Q. R. R. Co.* 598 (600).

TRAIN SERVICE.

Train service furnished complainant by the Rutland Railroad in the transportation of milk to Boston found unduly prejudicial to complainant and unduly preferred complainant's competitors, in violation of section 3. *Graustein v. B. & M. R. R.* 393 (401).

TRANSFER.

Both boat lines must be put by defendant on an equality in the use of river warehouse and incline in the transfer of l. c. l. traffic. *Cumberland Transportation Co. v. C., N. O. & T. P. Ry. Co.* 444 (447).

TRANSIT ARRANGEMENTS.

In General: To grant reparation on basis of a transit rule subsequently established would be tantamount to sanctioning the retroactive application of a transit arrangement which the Commission has repeatedly refused to do unless to remove an unlawful discrimination. *Burritt Co. v. C. P. Ry. Co.* 195 (196.)

Compression: Concentration and compression service at Lawton, Okla., withdrawn and subsequently reestablished, found to have resulted in unreasonable charges on cotton from Elgin, Cache, Indianola, and Davidson, Okla., to New Orleans, La., for export. Reparation awarded. *Bulley & Son v. St. L. & S. F. R. R. Co.* 171 (172).

Compression: Rates, regulations, and practices governing transportation of cotton, including compression, from points in Alabama to interstate destinations, not found unreasonable or otherwise unlawful; discrimination complained of against Union Springs, Ala., removed by action of carriers in providing for concentration or compression at that point on same terms as at other points in Alabama. *R. R. Comm. of Alabama v. C. of G. Ry. Co.* 516 (522).

Concentration: Charges on cotton from Hartwell, Ga., to various destinations, compressed in transit at Toccoa, Ga., found unreasonable to extent they exceeded charges applicable on basis of transit rule formerly in effect and subsequently reestablished. Reparation awarded. *Inman, Akers & Inman v. S. Ry. Co.* 564 (565).

Concentration: The situation here presented can not be regarded in the same light as a newly established transit arrangement and does not come within our rule against awards of reparation that are tantamount to the retroactive application of such provisions. *Id.* (565).

Milling: Combination of local rates charged on lumber from New Brunswick, Canada, to Hoosick Falls, N. H., milled at Long Pond, Me., which was not reshipped from the milling point within the 10-day period, not found unreasonable. *Burritt Co. v. C. P. Ry. Co.* 195 (196).

Milling: Restored transit service, through inadvertence, did not apply on shipments going beyond certain junctions. Charges on corn from points in Illinois, milled into gluten feed at Clinton, Iowa, found unreasonable to the extent they exceeded the joint through rates in effect plus one-half cent per 100 pounds. Reparation awarded. *Clinton Sugar Refining Co. v. C., B. & Q. R. R. Co.* 211 (212).

Refining: On cottonseed oil from points in Oklahoma, refined in transit at Kansas City, Kans., and forwarded to Chicago, Ill., St. Louis, Mo., St. Bernard, Ohio, the tariff rule limited the amount of soap stock which could be forwarded at transit rate. Following *Swift & Co. v. A. C. R. R. Co.*, 42 I. C. C., 294, the rule assailed and charges collected not shown unreasonable. *Procter & Gamble Mfg. Co. v. A., T. & S. F. Ry. Co.* 577 (578).

Stoppage in transit: Former finding that charges on corn and oats from various points to Kansas destinations, stopped in transit at Kansas City, Mo., were legally assessed, as the tariffs of the defendant did not authorize transit at industries not reached by its tracks, affirmed on rehearing. *Moore-Seaver Grain Co. v. U. P. R. R. Co.* 562 (563).

TRANSPORTATION.

The Rutland Railroad, in plain neglect of the duty imposed by section 1 of the act, failed, after reasonable request, to furnish complainant such transportation of the car as the law requires. *Graustein v. B. & M. R. R.* 393 (402).

Transportation has never been considered to include the use of a carrier's equipment and station property as a salesroom; and the mere toleration by the carriers through a period of years of such a use of their property affords no basis for a ruling that the practice has now grown into a shipper's right and a carrier's duty and is a transportation service. *The Car Peddling Case*, 494 (500).

TRANSPORTATION CONDITIONS.

Testimony as to comparative transportation conditions must of necessity be somewhat general, and to require a witness to have an intimate familiarity with the physical conditions existing on each of two roads before he can be permitted to testify that transportation conditions on the two roads are similar would ordinarily exclude as witnesses all persons who had not been actively employed in the operation of both roads. *Old Vincennes Distillery Co. v. B. & O. S. W. R. R. Co.* 447 (450).

TROOPS.

Certain facts indicate that the transportation of troops had been more remunerative during certain mobilizations in the past than ordinary passenger transportation. *The Fifteen Per Cent Case*, 303 (313).

TWO FOR ONE.

Fifty-foot car was ordered, and two smaller cars were furnished. Traction engine was loaded on first car and water tank on second car. The charges on the tank should have been under the carload rate and minimum weight applicable to the engine. Reparation awarded. *Bowling v. M., K. & T. Ry. Co. of Texas*, 473 (474).

TWO-LINE HAUL.

Rate on slag from South Bethlehem, Pa., to Philadelphia, Pa., over two-line interstate haul, not found unreasonable as compared with lower one-line intrastate rate. *National Slag Co. v. L. V. R. R. Co.* 125 (127).

In C. F. A. territory routes via two or more different lines in the same railway system were given preference over routes via roads having no corporate connection with each other. *C. F. A. Class Scale Case*, 254 (263).

UNDERCHARGES.

Undercharge may be waived to the extent of the difference between the charges legally applicable and the charges that would have accrued on the basis found reasonable; the remainder should be collected. *Spahn & Rose Lumber Co. v. L. & N. R. R. Co.* 111 (112).

Undercharge found to exist may be waived. Initial carrier should make settlement with its connections on basis of rate legally applicable. *Rawson v. C., C. & St. L. Ry. Co.* 183 (184).

Refund on certain shipments erroneously made prior to hearing resulted in undercharges. Reparation authorized on basis of rate found reasonable. Undercharges may be waived. *International Paper Co. v. M. C. R. R. Co.* 453 (454).

Rate of 10 cents on brick from Chanute, Kans., to Woolstock, Iowa, collected without tariff authority. Subsequent to shipment charges were demanded on basis of joint class E rate of 17.5 cents. Combination rate of 13 cents found legally applicable. Obligation upon complainant to pay lawful charge. *Sunderland Bros. Co. v. A., T. & S. F. Ry. Co.* 481 (482).

Charges on iron ore from Ontario, N. Y., to Chattanooga, Tenn., were assessed on joint rate applicable to chrome ore. Combination rate on iron ore legally applicable. Undercharge found to exist. *Lookout Paint Mfg. Co. v. N. Y. C. R. R. Co.* 539 (540).

Involved. *Kundtz Co. v. St. L. & S. F. R. R. Co.* 56 (57); *Friedman v. C. & N. W. Ry. Co.* 91; *Rankin & Co. v. C., M. & St. P. Ry. Co.* 132 (133); *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 584 (585); *Markley & Co. v. C., N. O. & T. P. Ry. Co.* 559.

UNDERCHARGES—Continued.

May be waived. *Brittain Bros. v. St. L. & S. F. R. R. Co.* 87 (90); *Smith & Sons Carpet Co. v. B. & A. R. R. Co.* 103 (104); *International Harvester Co. of New Jersey v. C. & N. W. Ry. Co.* 105 (106); *Sunderland Bros. Co. v. C. G. W. R. R. Co.* 113 (114); *Hurd Brokerage Co. v. W. V. R. R. Co.* 117 (118); *Swift & Co. v. B. & M. R. R.* 119 (120); *Western Grain & Sugar Products Co. v. B. & O. R. R. Co.* 127 (130); *Wichita Traffic Bureau v. A., T. & S. F. Ry. Co.* 143 (145); *Bulley & Son v. St. & S. F. R. R. Co.* 171 (172); *Scudders Gale Grocer Co. v. S. Ry. Co.* 181 (182); *Inman, Akers & Inman v. S. Ry. Co.* 564 (565).

USE.

Unsuccessful efforts have been made to subject the property of a railroad company to a use not connected with transportation. *The Car Peddling Case*, 494 (501).

VALUATION OF RAILROADS.

Questions whether carriers should be permitted to earn a reasonable return on property donated and property paid for out of revenues of carriers not discussed, as they are now pending in valuation proceedings. *The Fifteen Per Cent Case*, 303 (315).

VALUE OF COMMODITY.

Brooms: The value of an average carload of brooms is from \$2,000 to \$3,000. *Wichita Traffic Bureau v. A., T. & S. F. Ry. Co.* 143 (145).

Coca-Cola: The wholesale price of Coca-Cola sirup is \$1.50 per gallon and of other sirups from \$1.25 to \$2. *Coca-Cola Co. v. A., T. & S. F. Ry. Co.* 461 (464).

Excelsior and Excelsior Pads: Value shown. *Marinette-Green Bay Mfg. Co. v. I. C. R. R. Co.* 507 (508).

Molding: Unfinished carpenters' molding is worth from \$6 to \$7 per thousand feet more than lumber. *Daugherty, McKey & Co. v. A. C. L. R. R. Co.* 535 (536).

Sand and Gravel: Price of sand and gravel at Milwaukee, Wis., is about 90 cents per cubic yard, f. o. b. cars. *Great Western Sand & Gravel Co. v. C., M. & St. P. Ry. Co.* 529 (530).

Shingles, Asphalt: The value per 100 pounds of asphalt shingles and prepared roofing is substantially the same. *Sall Mountain Co. v. Southern S. S. Co.* 573 (574).

Pyrites Cinder: Is a by-product of iron-pyrites ore, used in the manufacture of cheap dry earth paint; average market value is \$1.50 per ton. *Harrison Bros. & Co. v. B. & O. R. R. Co.* 85.

VOLUME OF TRAFFIC.

Amount of milk and cream transported to Philadelphia, Pa., over various lines during 1915. *Milk and Cream Rates to Philadelphia, Pa.* 371 (373).

Table showing the amount of milk and cream delivered in New York, the percentage of the total delivered by each carrier, and the places of delivery during 1915. *Milk and Cream Rates to New York City*, 412 (416).

Table showing the number of cans of milk and cream delivered at New York City during representative years and the percentage of increase or decrease as between the years 1898 and 1915. *Id.* (418).

In 1902, 1903, and 1904 defendant boat line carried over 100,000 packages of fresh vegetables, while in 1915 it carried only 880 packages, due to competition of rail carriers. *Hopkins v. Ocean S. S. Co. of Savannah*, 568 (570).

VOLUNTARY REDUCTION. See REDUCTION IN RATES (BY CARRIERS).

WAR. See also EMBARGOES.

The Commission would respond unhesitatingly to the fullest extent of its lawful authority if the things here asked might contribute to the success of the war.

The Fifteen Per Cent Case, 303 (312).

WAR IN EUROPE.

Case based on conditions as they existed before the effects of the European War. C. F. A. Class Scale Case, 254 (256).

The emergency which the carriers believed existed when these proceedings were initiated was attributed by some primarily to the war in Europe. The Fifteen Per Cent Case, 303 (312).

Shortly following the outbreak of the European War an unprecedentedly heavy movement of freight to the eastern district began, and that district in large part has been badly congested ever since. Id. (323).

WAREHOUSE.

The failure to provide for complainant the same use of river warehouse and incline as for its competitor, in the transfer of l. c. l. traffic from boats at river landing at Burnside, Ky., results in undue prejudice. Cumberland Transportation Co. v. C., N. O. & T. P. Ry. Co. 444 (446).

WAREHOUSEMAN.

Lumber stored at pier 40, Philadelphia, Pa., is at the carrier's risk as warehouseman, and in self-protection it must provide insurance based on the estimated value of the average stocks in store. Sheip Mfg. Co. v. B. & O. R. R. Co. 408 (409).

WASHED COAL.

Process of washing described. Washed Coal Weights, 93 (94).

WASTE OF TRANSPORTATION.

Shipper's rule of adopting 8,000 gallons as standard carload, indicates that carrier's tank cars would ordinarily move under partial loads. The result would be a marked waste of transportation equipment. Lange Soap Co. v. G., H. & S. A. Ry. Co. 543 (544).

WATER RATES.

Any-quantity commodity rate of 20 cents per crate on onions from Savannah, Ga., to New York, N. Y., not shown unreasonable as compared with sixth-class rate. Hopkins v. Ocean S. S. Co. of Savannah, 568 (570).

WEAK LINES.

The needs of certain weak lines can not justify a course of action that is unwarranted by the condition of the larger number of strong and successful lines. The Fifteen Per Cent Case, 303 (315).

WEIGHT.

Proposed rule providing for the collection of charges on washed coal, in carloads, from Alabama mines to points in the south and west, on basis of actual net weight ascertained at points of shipment, and making no tolerance for moisture, found not justified. Washed Coal Weights, 93 (98).

Respondents and interested shippers should cooperate with a view to formulating a satisfactory rule for the determination of the weights upon which to collect freight charges on washed coal, consistent with suggestions made *In Re Weighing of Freight by Carriers*, 28 I. C. C., 7. Id. (98).

Estimated:

On shipment of cases of canned tomatoes from Baltimore, Md., to Pine Bluff, Ark., defendants' basis of estimated weight of 44 pounds per case not shown to have been unreasonable. Ferguson & Son Grocery Co. v. A., B. & A. Ry. Co. 81 (82).

WEIGHT—Continued.**Estimated—Continued.**

Rate on alcohol in tank cars, from Agnew, Cal., to Philadelphia, Pa., and other points, on basis of estimated weight of 6.83 pounds per gallon applied to the marked gallonage capacity of the cars, found unreasonable to the extent it exceeded rate based on actual weight per gallon at full gallonage capacity of the cars. Reparation awarded. *Western Grain & Sugar Products Co. v. B. & O. R. R. Co.* 127 (130).

For the purpose of comparison the weight of a standard crate of onions has been taken as 50 pounds. *Hopkins v. Ocean S. S. Co. of Savannah*, 568.

Scale:

Shipments of brewers' dried grain from Chicago, Ill., to Lake Geneva and other Wisconsin points, were not weighed by complainant. Contended that charges were on basis of excess weight, *Held*, Evidence offered was not sufficient to refute the presumption of accuracy which attaches to the track-scale weights. *Rankin & Co. v. C., M. & St. P. Ry. Co.* 132 (134).

WHAT TRAFFIC WILL BEAR.

Rates on salt from Portland, Oreg., and Seattle and Tacoma, Wash., to points in Washington, Oregon, Idaho, and Montana, interstate, stated to be based on what the traffic will bear. *The Northwestern Salt Cases*, 12 (19).

WITNESSES.

Testimony as to comparative transportation conditions must of necessity be somewhat general, and to require a witness to have an intimate familiarity with the physical conditions existing on each of two roads before he can be permitted to testify that transportation conditions on the two roads are similar would ordinarily exclude as witnesses all persons who had not been actively employed in the operation of both roads. *Old Vincennes Distillery Co. v. B. & O. S. W. R. Co.* 447 (450).

ZONE RATES.

For basis of new system of rates, C. F. A. territory is divided into three separate sections or zones, and use three separate scale of rates. Territory covered by these separate zones outlined. *C. F. A. Class Scale Case*, 254 (259).

Table showing zone rates published by the Pennsylvania R. R. Co. *Milk and Cream Rates to Philadelphia, Pa.* 371 (374).

Comparison of zones established by the Pennsylvania to Philadelphia, Pa., with zones established by carriers serving New York. *Id.* (378).

System of zone rates proposed by Philadelphia dealers not found reasonable. *Id.* (385-386).

Present zone adjustment and the rates and charges applicable to shipments of milk in less-than-carloads unduly prefer producers and shippers of milk from distant points, and are unreasonable and unduly prejudice producers and shippers from near-by points. *Milk and Cream Rates to New York City*, 412 (425).

Rates on sand and gravel from South Beloit, Ill., and other points to Chicago are made on a zone basis. *Great Western Sand & Gravel Co. v. C., M. & St. P. Ry. Co.* 529.

CONFERENCE RULINGS BULLETIN No. 7.

NOTICE.

This printing of Conference Bulletin No. 7 is issued under date of November 1, 1917, to correct errors in the first issue, under date of August 1, 1917.

THE INTERSTATE COMMERCE COMMISSION.

HENRY C. HALL, Chairman.

EDGAR E. CLARK.

JAMES S. HARLAN.

CHARLES C. McCHORD.

BALTHASAR H. MEYER.

WINTHROP M. DANIELS.

CLYDE B. AITCHISON.

ROBERT W. WOOLLEY.

GEORGE W. ANDERSON.

GEORGE B. McGINTY, Secretary.

EXPLANATORY NOTE.

The rulings of the Commission in conference are announced informally from time to time through the public press and are later edited and issued in this form for the information of shippers, carriers, and others interested in transportation matters. The rulings express the views of the Commission on informal inquiries involving special facts or requiring an interpretation and construction of the law, and are to be regarded as precedents governing similar cases. This bulletin contains all the rulings promulgated by the Commission since it adopted the practice of publishing them, and takes the place of previous bulletins.

It will be observed that in the light of a wider knowledge of the subjects involved some of the rulings have been withdrawn, while others have been modified and restated in later rulings. In such instances the text of the original ruling has been omitted, while the title and number have been retained with annotations directing attention to the development of the principle in the subsequent ruling.

For convenience of reference it is suggested that conference rulings be cited in briefs and correspondence in this form: "*Conf. Ruling* —," giving the number of the ruling, it being unnecessary to refer also to this bulletin by its number. Where the ruling consists of lettered paragraphs, as for example ruling 220, the particular paragraph may be cited in this form: "*Conf. Ruling 220b.*"

CONFERENCE RULINGS OF THE INTERSTATE COMMERCE COMMISSION.

Issued November 1, 1917.

November 4, 1907.

1. PASSES TO CARETAKERS.—An employee of a produce company was granted a pass for the purpose of going to a point on the carrier's lines and returning as caretaker of a carload of bananas. He was not able to secure a return shipment: *Held*, That the carrier must collect the full fare. (See ruling 37.)

2. TARIFFS DISTINGUISHING BETWEEN SHIPMENTS HANDLED BY STEAM AND ELECTRICAL POWER.—An amendment to tariff provided: "The above rates will only apply on shipments handled by steam power and will not apply when handled by electrical power": *Held*, That the limitation of the rates to shipments handled by steam power is unlawful and must be eliminated from the tariff. (See ruling 34.)

3. COLLECTION OF UNDERCHARGES.—(Restated in ruling 314.)

November 11, 1907.

4. RATES ON NEW LINES.—Rule 44 of Tariff Circular No. 14-A, providing that rates may be established in the first instance on "new lines" without notice, was intended to apply to newly constructed lines only. (See Rule 57, Tariff Circular 18-A.)

5. FREE STORAGE CREATING DISTRIBUTING POINT FOR PRIVATE INDUSTRY.—Its attention being called to a tariff which, in effect, created a distributing point for a special industry by granting it free storage at that point, either in its own or the carrier's warehouses, and practically without limit as to time, the merchandise when shipped out to go on balance of through rate, the Commission expressed its disapproval.

6. RECONSIGNMENT RULE WILL NOT BE GIVEN RETROACTIVE EFFECT.—A shipment consigned to one point was reconsigned en route to another, the tariff containing no recon-

signment privilege. As a consequence local rates to and from the reconsigning point were applied and made higher than the through rate: *Held*, Under subsequent tariff that did not reduce rates, but incorporated a reconsignment privilege, that the benefit of such privilege could not be applied retroactively to a previous shipment, and can not be accepted as the basis for a refund on special reparation docket. (Extended in application by rulings 77 and 166. See *Cady Lumber Co. v. M. P. Ry. Co.*, 19 I. C. C., 13; *Henry v. Eastern Ry. Co.*, 20 I. C. C., 172; and *Swift & Co. v. M. & O. R. R. Co.*, 39 I. C. C., 701.)

November 18, 1907.

7. COMMISSIONS ON IMPORT TRAFFIC.—The granting by carriers of commissions to persons acting as consignees on import traffic is a practice that can not be sanctioned. (See rulings 221*a*, 300, and 444.)

8. DEMURRAGE CHARGES RESULTING FROM STRIKES.—The Commission has no power to relieve carriers from the obligations of tariffs providing for demurrage charges, on the ground that such charges have been occasioned by a strike. (See note to ruling 242, and ruling 358.)

9. FREE TRANSPORTATION BY CARRIERS FOR ONE ANOTHER.—(Restated in ruling 225*b*.)

December 2, 1907.

10. STATUTE OF LIMITATIONS.—Claims filed with the Commission since August 28, 1907, must have accrued within two years prior to the date when they are filed; otherwise they are barred by the statute. Claims filed on or before August 28, 1907, are not affected by the two years' limitation in the act. (See rulings 220*j*, 306, and 307; also *Fels & Co. v. P. R. R. Co.*, 23 I. C. C., 487.)

11. REDUCTION OF RATE WHEN FORMAL COMPLAINT AGAINST IT IS PENDING.—(Restated in ruling 14.)

12. TARIFF THAT FAILS TO STATE THE DATE OF ITS EFFECTIVENESS IS UNLAWFUL.—A tariff was filed without naming a date on which it was to take effect. Does it ever become effective, and if so, when? *Held*, That the tariff was unlawful and has never taken effect. (See rulings 73 and 100*b*.)

13. TARIFFS NOT CONCURRED IN ARE UNLAWFUL.—A properly accredited chairman of a tariff committee published tariffs for certain carriers for which he was the duly constituted attorney-

in-fact for that purpose. A carrier declining to concur in his tariffs put a new cover on them and filed them as its own tariffs without securing the concurrences of the other carriers named therein: *Held*, That the tariffs so adopted were unlawful and could not be used by the carrier.

January 6, 1908.

14. MAINTENANCE OF RATE REDUCED AFTER COMPLAINT FILED.—On December 2, 1907, it was decided that when a rate is reduced after answer has been made and before hearing, the report disposing of the proceeding shall carry with it an order directing the defendant to maintain that rate as a maximum for not less than two years. On December 6 it was decided that orders in special reparation cases shall include a clause providing that the new rate or regulation upon the basis of which reparation is granted shall be maintained for a period of at least one year.

It is now agreed that the two years so required in orders upon formal complaints and the one year in orders in special reparation cases shall run from the date of the order and not from the date when the reduced rate or new regulation became effective. (See rulings 130, 200a, and 396.)

15. DELIVERING CARRIER MUST INVESTIGATE BEFORE PAYING CLAIMS.—(Restated in ruling 462.)

16. DELIVERING CARRIER MUST COLLECT UNDERCHARGES.—Even though an undercharge results from an error in billing by the initial carrier or a connection, the delivering carrier must collect the undercharge. The legal expense attending its efforts to collect undercharges in such cases would seem to be a valid claim against the carrier through whose fault the mistake was made. (Re-affirmed by ruling 156; see also ruling 314; also *Western Classification Case*, 25 I. C. C., 475.)

17. FEEDING AND GRAZING IN TRANSIT.—(Restated in ruling 442.)

18. FREE TRANSPORTATION OF DEAD BODY OF EMPLOYEE.—When an employee of a carrier has been killed or has died in service at a distant point, the carrier may, free of charge and as a general incident to the relation between it and its employees, lawfully transport the body to the home of the deceased for burial. (See rulings 173 and 193.)

NOTE.—The amendatory act of April 13, 1908, expressly sanctions the free transportation of the remains of a person killed in its employ.

19. EXPENSE INCURRED IN PREPARING CARS FOR SHIPMENTS CAN NOT BE PAID BY CARRIER IN THE ABSENCE OF TARIFF PROVISION THEREFOR.—Not having box cars available for the movement of machinery, cattle cars were supplied at the request of the shipper, who lined them with tar paper and felt in order to protect his shipments from weather conditions: *Held*, That in the absence of tariff authority the carrier can not lawfully reimburse the shipper for the expense so incurred. (See rulings 78, 132, 267, 292, and 360.)

20. SPECIAL UNDERSTANDINGS BETWEEN SHIPPERS AND CARRIERS, NOT PUBLISHED IN THEIR TARIFFS, OF NO VALID EFFECT.—A shipper had an understanding with agents of carriers that when he delivered shipments to them consigned to stations at which there were no agents the carriers would so advise him and hold the shipments for further direction. In a given case a carrier neglected to so advise him and to hold the shipment, but billed it and sent it forward to a nonagency station as a prepaid shipment: *Held*, That the shipper must pay the charges, and that no understanding of that nature, not incorporated in the published tariffs of the carrier, will operate to relieve the carrier from the duty of collecting the lawful charges. (See ruling 235.)

21. CARETAKERS OF MILK.—The provision of law relating to the free transportation of necessary caretakers of live-stock, poultry, and fruit can not be construed to include caretakers of shipments of milk.

NOTE.—Under the amendatory act of June 18, 1910, free transportation may be accorded to caretakers of milk.

22. FREE CARRIAGE OF COMPANY MATERIAL.—It is not unlawful for a carrier to return its own property free of charges, to the manufacturers thereof situated on its own line, for exchange or repair.

23. EXTENSION OF TIME ON THROUGH PASSENGER TICKETS.—(Withdrawn in ruling 43.)

24. CANADIAN FARES.—A Canadian carrier having joint through fares from a point in the United States to points on its own line may not depart from those fares by the device of placing an agent at such point in the United States with authority to sell tickets from the first station on its line north of the Canadian boundary to other points on its line in Canada at the rate of 1 cent a mile, “to be sold only to such persons as produce a certificate of the immigration agent of the Canadian government.” Besides being a device, tickets

so limited to particular persons operate as a discrimination. But in the absence of such joint through fares from a point in the United States to points on its own lines this Commission has no jurisdiction over the fares actually charged and collected for the separate transportation between points in Canada. (See ruling 98.)

25. REFUND OF DRAYAGE CHARGES CAUSED BY MISROUTING.—(Restated in ruling 509.)

26. USE OF INTRASTATE COMMUTATION TICKET IN INTERSTATE JOURNEY.—In the absence of a provision in the commutation contract forbidding it, a commutation ticket may be used between the points named on it in connection with an interstate journey on trains that stop at such points.

January 13, 1908.

27. EXCURSION TICKET INVALIDATED THROUGH FAILURE OF CARRIER TO MAKE CONNECTION.—A passenger traveling on a special limited excursion ticket with stop-over privilege leaves a stop-over point in ample time to make all connections and meet conditions of ticket; but through successive delays to trains misses connections at a certain junction, making the ticket twenty-four hours out of date. Regular fare was collected for the balance of the return trip: *Held*, That the carriers ought to make the ticket good, it having become invalid through their fault.

28. TICKETS FOR TRANSPORTATION AND MEALS, HOTEL ACCOMMODATIONS, ETC.—A carrier publishes a tariff offering certain transportation fares and rates for personally conducted tours with tickets to cover meals, hotel accommodations, etc., and declines to sell the transportation ticket to anyone who does not also purchase the tickets covering meals and hotel accommodations: *Held*, That the two matters must be kept separate, and carriers may not decline to sell such transportation without tickets for meals and hotel accommodations. (See ruling 384.)

29. QUOTATIONS FROM CORRESPONDENCE OF THE COMMISSION.—The Commission requests that if extracts from its correspondence are sent out by carriers, such extracts be made sufficiently full, or that sufficient of the correspondence be presented, to give a complete view and understanding of the meaning of the ruling and of the circumstances discussed, or of the inquiry answered therein.

January 15, 1908.

30. CARRIERS' MONTHLY REPORTS TO BE FURNISHED IN DUPLICATE.—Beginning as of January 1, 1908, monthly reports of revenues and expenses, as provided for in the order of the Commission, bearing date July 10, 1907, shall be filed in duplicate, and on or before the last day of the month immediately following the month covered by the report shall be deposited in the United States Post Office, postage prepaid, and plainly addressed to the Bureau of Statistics and Accounts, Interstate Commerce Commission, Washington, D. C.

31. DEMURRAGE CHARGES ON ASTRAY SHIPMENTS.—An astray shipment of perishable merchandise was not rebilled to its proper destination, but was sold by the consignee at the point where he found it. The delivering carrier at that point had assessed demurrage charges before the shippers were able to locate the car. That carrier expressed its willingness to waive the demurrage if the Commission permits: *Held*, That demurrage charges stand in the same light as transportation charges and may be adjusted under ruling 217 of this bulletin, formerly published as Rule 74 of Tariff Circular 15-A.

February 3, 1908.

32. DEMURRAGE CHARGES.—The delivering carrier is under obligation to collect demurrage charges assessed by it, although such charges may have accrued as the result of error on the part of another carrier. (See ruling 220*f*; see also note to ruling 242.)

The shipper should pay the lawfully published rate via the route over which the shipment moved, pending dispute, and then make claim for refund. The Commission, in the adjustment of misrouting claims, will not ordinarily include demurrage charges. (See ruling 220*e*; also *Ed. Caddell & Sons v. C. & S. Ry. Co.*, U. R. Op. 177.)

When the delivering carrier demands more than the lawful rate, the consignee is released from the obligation to pay demurrage charges accruing during the pendency of the dispute as to the lawful rate. (See Code of National Car Demurrage Rules.)

33. REDUCED RATE TRANSPORTATION FOR FEDERAL, STATE, AND MUNICIPAL GOVERNMENTS.—Under section 22 of the act to regulate commerce, carriers may grant reduced rates for the transportation of property for the United States or for state or municipal governments, under arrangements made directly with such government and in which no contractor or other third person intervenes, without filing or posting the schedule of such rates with the Commission. (See rulings 36, 208*e*, 218, 244, 311, and 452.)

34. COAL USED FOR STEAM PURPOSES NOT ENTITLED TO REDUCED RATES.—A tariff providing for reduced rates on coal used for steam purposes, or that the carrier will refund part of the regular tariff charges on presentation of evidence that the coal was so used, is improper and unlawful. That is to say, the carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put in order to enjoy a transportation rate. (See ruling 2; also *Board of Bristol, Tenn., v. V. & S. W. Ry. Co.*, 15 I. C. C., 456; *In the Matter of Restricted Rates*, 20 I. C. C., 427; and *Divisions of Joint Rates on Railway Fuel Coal*, 37 I. C. C., 265.)

35. USE OF STATE PASSES IN INTERSTATE JOURNEYS UNLAWFUL.—Passes granted to state railroad commissioners can not lawfully be used in interstate journeys.

February 4, 1908.

36. RATES ON SHIPMENTS FOR THE FEDERAL GOVERNMENT.—If title to property, such as postal cards, passes to the government at the point of manufacture, the carrier may agree upon a rate to be applied for transporting it for the government to another point, without filing a tariff with the Commission. But if the manufacturer under his contract is required to deliver to the government at such other point, the transportation must be under the published tariff rate. In other words, if the shipment is made directly by the government, this rate may be fixed by the carrier without posting and filing the tariff, but not otherwise. (See ruling 33, and ruling 244 rescinding ruling 65; also see ruling 452; also *United States v. A. & V. Ry. Co.*, 40 I. C. C., 406.)

37. PASSES TO CARETAKERS.—Passes to caretakers must be in the form of trip passes limited to the journey on which the person to whom the pass runs acts as a caretaker. It may also cover the return journey. Annual or time passes to caretakers are unlawful. (See ruling 1.)

38. REPARATION ON INFORMAL COMPLAINTS.—(Restated in ruling 396.)

March 3, 1908.

39. ACCRUED DEMURRAGE CHARGES.—A shipper who had customarily paid his freight charges in checks was called upon, under a general order issued by the carrier, to pay his freight charges in cash during the recent financial disturbances. While the local agent was endeavoring to get authority from the home office of the

carrier to continue to accept checks from this shipper, demurrage charges accrued: *Held*, That they could not lawfully be refunded. (See note to ruling 242.)

40. PRINTING OF BRIEFS.—(See current Rules of Practice.)

41. DIVISION OF PROCEEDS OF SALE OF SHIPMENT TO PAY FREIGHT CHARGES.—A shipment refused by the consignee and upon which demurrage had accrued was sold by the delivering carrier, but did not realize the amount of the transportation charges and the amount paid for unloading. Upon the request of the carrier the Commission declined to express its views as to the manner in which the proceeds of the sale should be divided among the several carriers participating in the movement, that being a matter to be determined by the interested carriers for themselves. (See rulings 114 and 145.)

42. RATES ON RETURN MOVEMENTS.—A shipment of mining machinery went to destination over the lines of one carrier and was subsequently returned for repairs over the lines of another carrier. The published tariff, to which all carriers participating in both movements were parties, provided for half rates on such return movements when over the same route as the original out-bound movement. A portion of the route of the return movement was over the line of a carrier which also formed a part of the through route over which the out-bound shipment moved: *Held*, That the regular tariff rate was properly applied on the return movement; that the return movement under through billing must be treated as a unit; and that there could be no refund on the basis of the half rates for any portion of such through return movement.

43. EXTENSION OF TIME ON THROUGH PASSENGER TICKETS.—The ruling heretofore announced under this head to the effect that an extension of time on a through ticket by a carrier whose line is a part of that route is binding on the lines of other carriers in the route, is now withdrawn. (Overruling ruling 23.)

44. LIMITATIONS OF PASSENGER TICKETS.—A passenger traveling on a round-trip ticket containing the provision that "This ticket will be good for return trip to starting point prior to midnight of date punched by selling agent in column 2. Final limit;" did not reach the last connecting carrier before the date punched on the ticket. The passenger was required to pay full fare on the last connecting line: *Held*, That a refund could not lawfully be made.

45. PASSENGERS ON FREIGHT TRAINS.—Upon inquiry made by a carrier the Commission holds that it may not confine the right to travel on freight trains to a particular class, such as drummers and commercial agents, but if the privilege is permitted to one class of travelers it must be open to all others on equal terms and conditions.

46. REPARATION ON INFORMAL PLEADINGS—PASSENGER TICKETS.—The rulings of the Commission relating to reparation on informal complaints do not extend to passenger traffic, but are limited to freight traffic only. The Commission will not entertain applications for authority to refund on passenger tickets on the ground that the fare was reduced shortly after the ticket was sold. (But see rulings 113, 247, 266, 277, and 385; see also *Nonvalidation of Limited Excursion Tickets*, 19 I. C. C., 442.)

March 9, 1908.

47. TARIFF TAKING EFFECT ON SUNDAY.—Under a tariff schedule regularly filed, showing a change in published rates, it happened that the thirty days' notice required by law expired on Sunday: *Held*, That the tariff is lawful.

March 10, 1908.

48. MAY A SHIPPER OFFSET A CLAIM AGAINST A CARRIER BY DEDUCTION FROM FREIGHT CHARGES ON SHIPMENT?—(Restated in ruling 323.)

49. BENEFIT OF REPARATION ORDERS EXTENDS TO ALL LIKE SHIPMENTS.—(Restated in ruling 220*d*; also see ruling 200*c*.)

50. WHEN JOINT AGENT PUBLISHES A NEW RATE BETWEEN TWO POINTS, WITHOUT CANCELING THE OLD RATE DULY PUBLISHED BY ONE OF THE CARRIERS, THE OLD RATE ON THAT LINE REMAINS IN EFFECT.—The published tariffs of an interstate carrier named a rate of 20 cents on a given commodity between specified points. On October 1, 1907, under a proper power of attorney, a joint agent of all carriers serving those two points published a rate of 22 cents. He failed to cancel the 20-cent rate and it was not formally canceled by the carrier that published it until January 14, 1908: *Held*, That because of the failure of the joint agent and of the carrier that published it to cancel that rate in the manner required by section 6 of the act, and Rule 8 of Tariff Circular 14-A, the 20-cent rate remained

the lawful rate of that carrier until formally canceled on January 14, 1908. (See rulings 70, 101, 104, and 239. Rule 8 of Tariff Circular 14-A is now published as Rule 8 of Tariff Circular 18-A.)

March 11, 1908.

51. THE USE OF PULLMAN CARS AT STOP-OVER POINTS CAN NOT BE LIMITED TO MEMBERS OF A PARTICULAR CLUB.—A carrier desiring to make excursion rates to a point where a convention is to be held wishes to accord to members of certain clubs the privilege of occupying the sleeping cars while the convention is in session: *Held*, That the carrier may lawfully arrange an excursion rate to such point and return, the rate to include sleeping-car accommodations to and from that point with the privilege of occupying the car at that point during the convention; but that the Commission does not understand that the carrier may limit the privilege to the members of any particular club.

52. RATE EASTBOUND CAN NOT BE APPLIED WESTBOUND UNLESS SO PUBLISHED.—A mixed carload of meat eastbound was diverted at the Ohio River on account of a flood, and, by order of the shipper, was taken by a roundabout route to a point east of its destination and was thence hauled westbound to destination. The mixed-carload rate applied on eastbound shipments, but the tariffs provided no mixed-carload rate on westbound shipments: *Held*, That such interruption of the eastbound movement would not justify the application of a mixed-carload rate on the westbound movement to destination.

53. TRANSIT PRIVILEGE NOT AVAILED OF CAN NOT BE RENEWED AFTER THE EXPIRATION OF THE TIME ALLOWED IN THE TARIFFS.—A consignor of sheep, which were being grazed in transit, was unable because of a severe snow-storm to get the sheep to the station before the grazing privilege expired according to the published time limit. Upon inquiry of the carrier it was held that it can not lawfully take the sheep forward on the rates which would have been applicable under the tariff had the sheep been shipped within the time limit.

March 16, 1908.

54. DEMURRAGE ON INTERSTATE SHIPMENTS.—Questions of demurrage and car service on interstate shipments are within the jurisdiction of the Interstate Commerce Commission, which does not concur in the view suggested by certain state commissions that

such matters, even when pertaining to interstate shipments, are within their control. (Reaffirmed by ruling 223*b*.)

55. FREE PASS TO RAILWAY EMPLOYEE ON LEAVE OF ABSENCE.—An employee who has not been suspended or dismissed from the service, but is on leave of absence and is still carried on the roll of employees of the carrier, is still an employee and as such may lawfully use free transportation.

NOTE.—This ruling was made by the Commission on March 16, 1908; by the amendatory act of April 13, 1908, carriers were given the right to give free transportation to "furloughed, pensioned, and superannuated employees."

April 7, 1908.

56. HOURS-OF-SERVICE LAW—STREET-CAR COMPANIES.—Upon inquiry whether the hours-of-service law applies to electric street car lines which are interstate carriers: *Held*, That it applies to all railroads subject to the provisions of the act to regulate commerce, as amended, including street railroads when engaged in interstate commerce. (See ruling 287.)

57. RESHIPPING RATE FROM PRIMARY GRAIN MARKETS.—May a carrier lawfully cancel its local, reconsigning, proportional, and other rates, on outbound shipments of grain from a primary market like Kansas City, where no grain originates upon which the local rate would be applicable, and substitute for them a reshipping rate applicable on all outbound grain?

Responding to the inquiry the Commission approved the suggestion, but declines in advance to express approval of such reshipping rate when it makes less than the published rate from an intermediate point.

58. DECLARING A FALSE VALUATION IN VIOLATION OF SECTION 10.—Upon an inquiry from a banking house whether it may lawfully declare a value of \$5,000 upon a package of negotiable bonds of the market value of \$10,000 and pay the express charges on the basis of the declared value, upon the understanding that in case of the loss of the bonds the express company will be responsible only for the amount so declared, it was held that a shipper falsely declaring the value of a package delivered to an express company for transportation violates section 10 of the act. (See ruling 295 and compare ruling 188; see also *Express Rates, Practices, Accounts, and Revenues*, 43 I. C. C., 510.)

59. CARRIERS MUST SEND CAR THROUGH OR TRANSFER SHIPMENT EN ROUTE.—Where connecting lines have united in publishing a joint through rate between two points it is

the sense of the Commission that it is the duty of the carriers in the route to provide the car and permit it to go through to destination or to transfer the property en route to another car at their own expense. (Affirmed in ruling 339.)

60. NO REFUND TO PASSENGER WHO EXCEEDED STOP-OVER LIMIT.—A passenger, while availing himself of a stop-over privilege at a certain point in his journey, was subpoenaed as a witness in a proceeding in a civil court, and obeying the process was not able to proceed on his journey within the time limit of the stop-over. As a result he was compelled to pay an additional fare from that point to destination: *Held*, That a refund could not lawfully be made.

61. STORAGE CHARGES ON TRUNK ACCRUING BECAUSE OF INJURY TO PASSENGER.—The Pullman car in which a passenger was traveling was derailed and went over an embankment, resulting in an injury to a passenger, who in consequence was detained for some time. His trunk was taken on to destination and storage charges accrued on it until claimed by him: *Held*, That the storage charges might lawfully be refunded.

April 14, 1908.

62. BOATS THAT ARE NOT COMMON CARRIERS.—Certain carriers have been in the habit of advancing the charges of sailing vessels, boats, and barges bringing vegetables to their terminals to be forwarded to interstate destinations, and of entering the amount on waybills as charges in addition to their tariff rates. Upon inquiry whether the carriers may lawfully continue this practice it was held that if the boats are common carriers, making regular trips and offering their services to the general public, they must file tariffs and the practice must be discontinued until they do so. (See ruling 428; also ruling 444.)

63. SERVANTS MAY NOT USE FREE PASSES.—(Amended by rulings 92 and 95c.)

64. ABSORPTION OF SWITCHING CHARGES.—The tariff of a carrier provided for the absorption of switching charges. Upon inquiry it was agreed that the Commission could not sanction a practice under which switching charges are paid by the consignee, the carrier deducting the amount of the switching charges from the published rates and collecting the balance from the consignee. In all cases the carrier must collect the full tariff rates. Where its tariff provide for absorptions of switching charges the carrier must pay the switching company for its services and not leave that to be done by the shipper.

April 18, 1908.

65. SPECIAL RATES FOR UNITED STATES, STATE, OR MUNICIPAL GOVERNMENTS.—(Overruled and withdrawn by ruling 244; also see ruling 208e.)

May 4, 1908.

66. JOINT RATES BETWEEN A WATER AND A RAIL CARRIER SUBJECTS THE FORMER TO THE PROVISIONS OF THE ACT.—A steamboat line agreed upon joint rates with a rail line for certain passenger and freight traffic: *Held*, That it could not unite with a railroad company in making a through route and joint rate on a particular traffic without subjecting all its interstate traffic to the provisions of the law and to the jurisdiction of the Commission.

In the Matter of Jurisdiction Over Water Carriers, 15 I. C. C., 205, the Commission held that carriers of interstate commerce by water are subject to the act to regulate commerce only in respect of traffic transported under a common control, management, or arrangement with a rail carrier, and in respect of traffic not so transported they are exempt from its provisions. (See rulings 155, 201, 354, 401, and 422; also *Kansas City Missouri River Navigation Co. v. C. & O. Ry. Co.*, 34 I. C. C., 67.)

67. HANDHOLDS—SAFETY-APPLIANCE LAW.—The law makes no distinction between passenger and freight cars, and handholds must, therefore, be placed on the ends of passenger cars and cabooses.

68. ADJUSTMENT OF CLAIMS.—(Restated in ruling 236; also see ruling 462.)

69. ERROR BY TICKET AGENT.—A station agent inadvertently failed to indorse "colonist ticket" on a regular ticket sold upon a published colonist rate: *Held*, That the connecting carriers must be paid their full proportion of the first-class rate, but that the Commission would not intervene between the initial carrier and its agent. (Reaffirmed by ruling 277; see also ruling 105.)

May 5, 1908.

70. EFFECT OF A FAILURE IN A NEW TARIFF NAMING HIGHER RATES TO CANCEL THE SAME RATES IN PRIOR TARIFF.—A carrier's tariff, effective January 1, 1903, named certain rates between two points. By a joint tariff, effective February 1, 1908, higher rates were named between the same points, but without reference to the previous tariffs or cancellation of the lower rates

therein. On March 26, 1908, a supplement was filed, naming the same higher rates and canceling the rates named in the tariff of January 1, 1903: *Held*, That until March 26, 1908, when the original rates were canceled, they remained in effect and were the lawful rates. (See rulings 50, 101, and 104; compare ruling 239.)

71. DIFFERENT FARES TO DIFFERENT SOCIETIES UNLAWFUL.—A tariff covering daily picnic excursions between certain points for the season named fares for Sunday and day schools and different fares for "societies:" *Held*, That the tariff is discriminatory and that the fares for the school picnics should be the same as for society picnics. (See ruling 99.)

72. RECONSIGNMENT PRIVILEGES AND RULES.—(a) Usually the combination of intermediate rates is higher than the through rate. Frequently a shipper desires to forward a shipment to a certain point and have the privilege of changing the destination or consignee while shipment is in transit, or after it arrives at destination to which originally consigned, and to forward it under the through rate from point of origin to final destination. Many carriers grant such privilege and generally make a charge therefor.

(b) The privilege is of value to the shipper, and in order to avoid discrimination it is necessary for carrier that grants such privilege to publish in its tariff that fact, together with the conditions under which it may be used and the charge that will be made therefor. Such rules should be stated in terms that are not open to misconstruction.

(c) Some carriers do not count a change of consignee which does not involve a change of destination as a reconsignment, while others do consider it a reconsignment and charge for it as such. The Commission holds the view that without specific qualifications the term "reconsignment" includes changes in destination, routing, or consignee. If carrier wishes to distinguish between such changes in its privileges or charges it must so specify in its tariff rules. Reconsignment rules and charges must be reasonable, and a charge that would be reasonable for a diversion or change of destination might be unreasonable when applied to a simple change in consignee which did not involve change in destination or more expensive delivery. (This rule is the same as rule 74 of Tariff Circular 18-A. See *Beekman Lumber Co. v. K. C. S. Ry. Co.*, 17 I. C. C., 87; *Doran & Co. v. N., C. & St. L. Ry.*, 33 I. C. C., 527; and *Atwood & Co. v. C., B. & Q. R. R. Co.* 42 I. C. C., 386.)

73. EFFECTIVE DATE OF TARIFF FILED BY A CARRIER WHEN FIRST COMING UNDER THE LAW.—A carrier under its arrangements for the first time to participate in interstate

transportation, failed to note an effective date on its first tariff schedule: *Held*, That being that carrier's first tariff it became effective as soon as filed. (See rulings 12 and 100*b*.)

74. HOURS-OF-SERVICE LAW.—Employees deadheading on passenger trains or on freight trains and not required to perform, and not held responsible for the performance of, any service or duty in connection with the movement of the train upon which they are deadheading, are not while so deadheading "on duty" as that phrase is used in the act regulating the hours of labor. (See ruling 287*b*.)

May 12, 1908.

75. VALIDATION OF TICKETS.—The condition that a round-trip passenger ticket shall be validated for the original purchaser by carrier's agent at a given point is one of the conditions which affects the value of the service rendered the passenger and one of the conditions that must be observed the same as the rate under which the ticket is sold, which must therefore be stated in the tariff under which it is sold. The tariff may provide for validation at numerous points, and it may provide for validation at any point intermediate to the original destination named in the ticket. The conditions stated upon the ticket should not conflict with the tariff provisions, but if in any case there should inadvertently be conflict between the tariff provisions and the conditions stated on the ticket the tariff rule must govern. (See rulings 125 and 167.)

76. REDEMPTION OF PASSENGER TICKETS.—The unused portion of a passenger ticket, when presented by the original holder to the carrier that issued it, may lawfully be redeemed by the carrier by paying to the holder the difference between the value of the transportation furnished on the ticket at the full tariff rates and the amount originally paid for the ticket. (See rulings 115, 228, 238, 265, and 303.)

May 14, 1908.

77. TRANSIT PRIVILEGES NOT RETROACTIVE.—Ruling 6, providing that the benefit of reconsignment privileges can not be given retroactive effect, is held to include cleaning, milling, concentration, and other transit privileges. (See ruling 166; also *Henry v. Eastern Ry. Co.*, 20 I. C. C., 172.)

June 1, 1908.

78. GRAIN DOORS.—(a) A carrier may not lawfully reimburse shippers for the expense incurred in attaching grain doors to box cars unless expressly so provided in its tariff. There is a material

difference between the furnishing of service or facilities to carriers by one who is not a shipper and the furnishing of the same facilities or services by one who is a shipper. (See rulings 19, 292, and 360.)

(b) The Commission now decides that its ruling above and the requirements of the law thereunder will, for the present at least, be satisfied if the carriers that propose to pay shippers for grain doors furnished by such shippers provide in their tariffs that where grain doors are necessary and are furnished by the shipper the carriers will pay the actual cost of such doors, with stated maximum allowances per grain door and per car. (Affirmed by ruling 267.)

(c) Such maximum allowances per door and per car must be reasonable, and where carrier pays for such doors on the basis of actual cost certified statement from shipper, verified, as to the number of doors furnished and the cars for which furnished, by carrier's agent, should in every instance be required. (Reaffirmed by ruling 267; see ruling 132; also *Loomis v. L. V. R. R. Co.*, 240 U. S., 43; *National Lumber Ass'n. v. A. C. L. R. R. Co.*, 14 I. C. C., 154; and *N. Y. Shippers Ass'n. v. N. Y. C. & H. R. R. Co.*, 30 I. C. C., 437.)

June 2, 1908.

79. "PRIVATE SIDE TRACKS" AND "PRIVATE CARS" DEFINED.—(a) (Modified and restated in ruling 121.)

(b) A private car is defined in the opinion as "a car owned and used by an individual, firm, or corporation for the transportation of the commodities which they produce or in which they deal." It will include also cars owned and leased to shippers by private corporations. (Qualified by ruling 122; also see ruling 128.)

(c) The ruling as to demurrage charges on private tank cars is applicable to all other private cars used by the railroads and paid for on a mileage basis. (See ruling 222.)

(d) It is not the intention of the Commission that its ruling shall be given a retroactive effect. The demurrage question has been in a state of great confusion, and the desire of the Commission is to establish a uniform, fair, and practicable system for the future. Claims for refund of demurrage charges previously collected in accordance with regular tariff rules will not be entertained with favor. (See rulings 123, 138, 222, and note to ruling 242; see also Rule 75 of Tariff Circular 18-A.)

June 9, 1908.

80. SHIPMENT THAT MOVED IN UNDER A FORMER TARIFF DOES NOT LOSE THE BENEFIT OF TRANSIT PRIVILEGE CANCELED PENDING THE OUT MOVEMENT.—A tariff enabled shippers to concentrate commodities or local rates at a certain point for shipment within a named period in

carload lots, the in-bound billing to be surrendered and through rates from point of original shipment to apply. Before the period for taking advantage of this privilege had expired a new tariff made a new arrangement: *Held*, That with respect to shipments that had moved to the concentrating point under the old tariff and which moved out within the period therein allowed, the old rate should apply. (See *Isbell-Brown Co. v. G. T. W. Ry. Co.*, U. R. Op. A-908.)

81. SUPPLEMENTING MILEAGE BOOKS BY PAYING REGULAR LOCAL MILEAGE RATES.—The practice under a published tariff rule which permits the holder of a mileage book which does not contain enough coupons to enable him to complete his journey to pay for the balance of the journey at the regular local rate per mile, as published by the carrier, is not unlawful. (See ruling 382.)

82. CHARTERING TRAINS.—It is not unlawful for a railroad company to publish a tariff under which a locomotive and train of cars may be chartered at a named rate, tickets for the journey on that train to be sold by the person chartering the train.

83. BLOCKADE BY FLOOD.—A carrier accepted a carload shipment for movement to a point beyond its line. After delivering the shipment to a connection at a junction point it was advised that the connecting line had been closed by floods. The initial carrier accepted the return of the car from that line and ordered it forward to destination via another route carrying higher rates, taking this action without instructions from the shipper: *Held*, That the initial line was responsible to the shipper for the resulting increase in the transportation charges. (See rulings 146, 147, and 213a; also *Woodward & Dickerson v. L. & N. R. R. Co.*, 15 I. C. C., 173; *Weyl-Zukerman & Co. v. C. M. Ry. Co.*, 27 I. C. C., 495; and *Morse Lumber Co. v. L. & N. R. R. Co.*, 33 I. C. C., 572.)

84. A COMMODITY RATE TAKES THE COMMODITY OUT OF THE CLASSIFICATION.—A carrier having a high class rate on furniture with a low minimum also had a lower commodity rate with a higher minimum. In response to an inquiry whether they are privileged to use either rate as they desire: *Held*, That the only purpose of making a commodity rate is to take the commodity out of the classification. The commodity rate is, therefore, as stated in Rule 7, Tariff Circular 15-A, the lawful rate. And if the carrier does not desire to apply it on all shipments it must be canceled. (See also Rule 7 of Tariff Circular 18-A.)

June 25, 1908.

85. SUBSTITUTING TONNAGE AT TRANSIT POINT.—
(Restated in ruling 203.)

86. POSTING TARIFFS AT STATIONS.—Under the order of the Commission of June 2, 1908, entitled "In the Matter of Modification of the Provisions of Section Six of the Act with Regard to Posting Tariffs at Stations," if a subsidiary or small connecting line has authorized the parent company, or principal connecting line, to publish and file for it all of its tariffs, tariffs so issued and filed on its behalf will be included in the complete public tariff files of the parent or issuing line, and it will not be necessary for such subsidiary or small line to maintain an additional complete public file. (See also ruling 289.)

The order above mentioned was in effect superseded by an order of October 12, 1915, relating to the same matter.

87. TRANSPORTATION FOR EATING HOUSES OPERATED BY OR FOR CARRIERS.—Carriers subject to the act may provide at points on their lines eating houses for passengers and employees of such carriers, and property for use of such eating houses may properly be regarded as necessary and intended for the use of such carriers in the conduct of their business. Such eating houses, however, must not serve the general public, or any portion thereof, with food prepared from commodities which have been carried at less than the full published rate, and no utensils, fuel, or servants at all employed in serving others than passengers and employees of the carrier as such should be carried at less than tariff rates. Such privileges as may be extended under this rule shall be applied only as to points local to the line on which the eating house is situated. (Compare ruling 124; and see ruling 340.)

88. HOURS-OF-SERVICE LAW.—(a) The specific proviso of the law in regard to hours of service is:

"That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four hour period or not exceeding three days in any week."

These provisions apply to employees in towers, offices, places, and stations, and do not include train employees who, by the terms of the law, are permitted to be or remain on duty sixteen hours consecutively or sixteen hours in the aggregate in any twenty-four hour period, and who may occasionally use telegraph or telephone instru-

ments for the receipt or transmission of orders affecting the movement of trains. (See ruling 287.)

The commission decided in conference on April 9, 1917, to rescind paragraph (b) of this ruling, because the question upon which it was made has since been judicially interpreted and is now pending in the courts upon appeal.

June 29, 1908.

89. JURISDICTION OF ACT OVER LOCAL BELT OR SWITCHING LINES.—The question is asked, "Is a belt line owned by a municipality, which participates in interstate movements, subject to the jurisdiction of the act and of the Commission?" *Held*, That it is subject to such jurisdiction. (Compare ruling 162.)

90. MISROUTING VIA LINE THAT HAS NO TARIFF ON FILE.—A shipment was misrouted and passed over a route via a part of which no rate was filed with the Commission, and was thus subjected to a higher charge than the through rate via the proper route: *Held*, That misrouting carrier may be authorized to make refund on account of its error in misrouting shipment, and that carrier which participated in the transportation without lawful tariff applicable thereto should be dealt with through the Division of Prosecutions. (See ruling 93.)

91. A MUCH LONGER AND MORE INDIRECT ROUTE NOT A REASONABLE ROUTE.—A shipment was tendered destined to a certain point, the direct route to which was over the lines of two carriers, a distance of 358 miles, the rate via that route being 22 cents. It was possible to send the shipment around over the lines of three carriers, a distance of 617 miles, and secure a combination rate of only 19 cents. Application for refund was made on account of the difference between the rates: *Held*, That the claim for refund should be denied on the ground that the much longer and indirect route is not a reasonable route. (See ruling 214; also *R. B. Homer Lumber Co. v. S. A. L. Ry.*, U. R. Op. A-351.)

92. USE OF PASSES BY SERVANTS.—Opinion expressed on April 14, 1908, on the subject of use of passes by servants, is modified: *Held*, That a household servant when traveling with a member of the family entitled to a pass is included within the term "family" as used in the act. (Amending ruling 63; see also ruling 95c.)

June 30, 1908.

93. MISROUTING INVOLVING CARRIERS NOT SUBJECT TO THE ACT.—A shipment was tendered to a carrier in North Carolina, destined to California. Shipper requested that it be

sent via New York and the Isthmus of Panama. Shipment was forwarded all rail under a rate alleged to be higher than would have applied via the route indicated: *Held*, That the Commission can not authorize refund because no tariffs are on file with the Commission via the route over which the shipper directed the shipment moved, and there is therefore no official measure of the accuracy of the claim for overcharge or the amount thereof. (See rulings 90 and 214.)

94. LEASING CARRIER'S PROPERTY IN CONSIDERATION OF LESSEE'S SHIPMENTS.—A carrier leases a part of its property to a certain industry under a contract which contains the obligation on part of the lessee industry to make all of its shipments by the line of the lessor carrier. Such a provision plainly implies that the traffic so furnished by the lessee and so secured by the lessor is an important and substantial consideration which might amount to a concession in the rates for transportation, and, therefore, be an unlawful device or discrimination. The Commission expressed doubt as to the propriety of the practice. (See rulings 325 and 421.)

95. NOTICE AS TO THE ISSUANCE OF PASSES.—It appearing that the ruling issued by the Commission on the 9th day of June, A. D. 1908, relative to the issuance and use of passes, should be modified in certain respects relating to the forms of passes to persons eligible to receive free transportation under the act to regulate commerce, it is ordered that said ruling shall be amended to read as follows:

(a) Many abuses in the issuance and uses of passes have been discovered by the Commission which it is desired to correct, and to this end, and because of the misinterpretation of the law by carriers generally, the Commission at this time makes announcement that it will recommend the indictment and prosecution of all carriers and persons issuing passes to, or allowing the use of passes by, any persons not included within the designated classes to whom free transportation may be given by carriers subject to the act to regulate commerce as set forth in said act. Among those not included under the provisions referred to are the following:

1. Officers or employees of news companies other than newsboys. (See *Transportation of Newspaper Employees*, 12 I. C. C., 15.)
2. Officers or employees of telegraph or telephone companies, excepting when personally engaged in operation, extension, repair, or inspection of lines upon or along the railroad right of way and used in connection with the operation of the railroad. (The amendatory act of June 18, 1910, brings telephone and telegraph companies within the jurisdiction of the Commission; see ruling 305; see also rulings 161 and 219.)

3. Officers or employees of surety, transfer, and baggage companies, except baggage agents. (See ruling 216, also *U. S. v. Erie R. R.*, 236 U. S. 259.)
4. Officers or employees of carriers not subject to the act to regulate commerce, including officers and agents of steamship and stage lines not subject thereto. (See ruling 196; also 95*c* and 475.)
5. Officers or employees of subsidiary corporations engaged in business other than transportation subject to the act to regulate commerce, save that such officers and employees may be granted free transportation when attending to business imposed upon a carrier subject to the act. (See rulings 169, 208, and 263.)
6. Families of local attorneys, surgeons, and others who are not regularly employed by carriers. (See ruling 208*a*.)

(*b*) Each pass issued must bear upon its face the name of some person belonging to a class named in section 1 of the act as eligible to receive free transportation. In addition to such person so named a pass may also carry not to exceed a specified number of unnamed persons of any class eligible to receive free transportation; the number and the class to which such person belongs being specified upon the face of the pass—that is to say, passes in the following forms will be recognized by the Commission as legal:

“Pass John Smith, President, car, and five officers and employees of the X. Y. & Z. Railway.”

“Pass J. R. Barner and six linemen, foreman, and force of the Western Union Telegraph Company. Good only when traveling in connection with the construction, maintenance, or operation of the lines of the Western Union Telegraph Company on the right of way of this A. B. C. Railway Company.”

“Pass one extra messenger of the Southern Express Company when presented with letter signed by Superintendent, Assistant Superintendent, or Route Agent of said Express Company, authorizing use and giving name of person to be passed.”

“Pass John Smith, section foreman, and six employees of X. Y. & Z. Railway.”

(*c*) The Commission holds that the word “family,” as used in section 1 of the act to regulate commerce, includes those who are members of, and who habitually reside in, the household of the person eligible to receive family passes, including household servants when traveling with the family or with any member thereof, and relatives who are in fact dependent upon such person, although not actually residing in his household. (See rulings 92, 174, and 417.) The Commission will, therefore, view passes in the following form as lawful:

“Pass John Smith, wife, two sons, three daughters, and two servants.”

“Pass Mrs. John Smith and daughter, account John Smith, Agent X. Y. & Z. Railroad Company at Washington, D. C.”

(d) The name of the person presenting the pass must appear upon it. Passes intended to be used in the absence of the head of the family whose occupation makes the issuance of passes lawful must, in addition to the name of said head, show the name of the person using the same. (See ruling 290.) For instance, a pass to be used by John Smith, his wife, or his daughter, separately, should read:

"Pass John Smith, Mrs. John Smith, and Miss Mary Smith, account C. & O. Agent at Richmond, Va."

(e) Every pass to an officer or employee of a carrier other than the one issuing the pass, shall indicate the name and rank of the person to, or on behalf of whom, such pass is issued, as well as the name of the carrier employing him.

(f) The Commission construes the act, so far as it relates to railway-mail service employees, as giving such employees the right to receive free transportation when on duty in their cars, or when traveling under orders from a superior officer. The Commission does not now undertake to say how far this portion of the act to regulate commerce is modified or controlled as regards railway-mail service employees by other statutes or by contracts between carriers and the Post Office Department. (See ruling 377.)

(g) The Commission will recognize any rail or water carrier filing a tariff, joint or local, with the Commission, as a carrier subject to the act so far as the issuance of passes to its officers and employees may be concerned. Where a carrier has no tariffs on file with the Commission, and does not acknowledge itself subject to the Commission's jurisdiction, the Commission will regard the issuance of passes to its officers or employees as unlawful, without, however, thereby passing upon the question of the jurisdiction of the act over such carrier in so far as it may be necessary to assert such jurisdiction. In this regard reference is made to *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.*, 13 I. C. C., 266, and *In re Petition Frank Parmelee Co.*, 12 I. C. C., 39. By reference to these decisions it will be seen that among the carriers not subject to the act are ocean carriers to nonadjacent foreign countries and domestic carriers by wagon, stage, or automobile. Carriers covered by these decisions are not eligible to file tariffs or receive passes. (See rulings 196, 216, 263, 355, and 475.)

(h) The Commission reaffirms Rule 63 of Tariff Circular 15-A, now reported as ruling 208 of this bulletin.

(i) The Commission can not undertake, in any case, to determine whether or not individuals are within any of the classes mentioned in section 1 of the act as eligible to receive free transportation.

(j) The Commission will not regard as unlawful allowance of use, or the use of passes merely irregular in form, under this ruling, dur-

ing the present calendar year. Passes, however, issued to persons not eligible to receive the same must be called in at once, as well as passes so loosely framed that persons not eligible to receive free transportation may be carried upon them—that is to say, a pass to “John Smith, family, and household servants,” although irregular in form, will not be regarded by the Commission as unlawful prior to January 1, 1909. A pass, however, to “John Smith, car, and party,” being susceptible of use for the transportation of persons not within the act, should be immediately corrected.

(k) Carriers are enjoined against the destruction of records or memoranda touching the issuance of passes, and the passes themselves, coming into the hands of the carriers after use, must, until further order of the Commission, be retained for a period of not less than five years. (See Commission’s Regulations to Govern Destruction of Records of Steam Roads Effective July 1, 1914, and Regulations to Govern Forms and Recording Passes, Effective Jan. 1, 1917.)

October 12, 1908.

96. DEMURRAGE ON F. O. B. SHIPMENTS.—A purchased a carload of lumber f. o. b. at the milling point. Demurrage accrued on account of the failure of B, the mill owner, to promptly load the car. Carrier inadvertently delivered the car to A without collecting the demurrage. Upon its inquiry as to whether to demand the demurrage from A or B: *Held*, That the demurrage must be collected by the carrier either from the vendor or the vendee, but that the Commission can not undertake to investigate the facts and determine for the carrier whether the vendor or the vendee is liable for the charges. (See note to ruling 242; also *Crescent Coal & Mining Co. v. B. & O. R. R. Co.*, 23 I. C. C., 83.)

97. COLLECTION BY CARRIER OF L. C. L. SHIPMENTS.—The Commission condemns as unlawful a practice under which a carrier provides an empty car at factory sidings, in which the shipper may load L. C. L. shipments, which the carrier then moves to its regular freight station where the shipments are assorted and placed in other cars to be forwarded to their respective destinations. Such practice is lawful only under definite and clear tariff authority, non-discriminatory in terms and in its application. (See *Trap or Ferry Car Service Charges*, 34 I. C. C., 521.)

98. LOCAL BILLING TO AVOID HIGHER THROUGH RATE.—A lawful through rate existed between two points, applicable over two routes, one of which was indirect, and therefore not ordinarily used by the carrier for through movements. The shipper billed locally to a point on the latter route, and rebilled to destination without taking either constructive or actual possession of the

shipment at the local point, but making his rebilling arrangements with the agent of the carrier at a distant point. Upon arrival of the shipment at destination, the carrier collected the balance of the through rate: *Held*, That the local billing was not in good faith, but was a device between the shipper and the carrier's agents to avoid the higher through rate, by having the carrier's agents act as the forwarding agents of the shipper; therefore the through rate is the only rate lawfully applicable. Affirmed in ruling 337. (See also rulings 24 and 365; also *In re Wharfage Facilities at Pensacola, Fla.*, 27 I. C. C., 258; *Doran & Co. v. N. C. & St. L. Ry.*, 33 I. C. C., 527; and *Kanotex Refining Co. v A., T. & S F. Ry. Co.*, 34 I. C. C., 271.)

99. REGULATIONS GOVERNING COMMUTATION TICKETS MUST NOT DISCRIMINATE AS BETWEEN CLASSES OF PERSONS.—(a) A carrier offers a 46-trip monthly commutation ticket and provides that it shall be issued only to pupils, without regard to age, who are in attendance on schools of a certain kind or class, and specifically provides for the exclusion of pupils attending various other kinds of schools: *Held*, That this regulation is unjustly discriminatory, and therefore unlawful, but that carriers may lawfully offer and use a commutation ticket limited in its sale and use to children or young persons between certain stated ages (as, for instance, from 12 to 21 years of age).

(b) Such arrangement will provide desired rates for school pupils and will not exclude other children traveling under substantially similar circumstances but for the purpose of securing other lines of instruction or on other missions. It will also protect against the use of such ticket by adults. The carrier may not inquire into the mission, errand, or business of the passenger as a condition of fixing the transportation rate which such passenger shall pay. (See ruling 71; also *Commutation Tickets to School Children*, 17 I. C. C., 144.)

100. EFFECTIVE DATE OF TARIFF THAT WAS USED BEFORE AUGUST 28, 1906, BUT WAS NOT FILED UNTIL AFTER THAT DATE.—(a) Prior to the effective date of the amended act some carriers used the car-service rules of car-service associations under which to assess demurrage and other terminal charges, but did not file those rules with the Commission until after the amended act became effective. Such publications bore effective dates antedating their filing, but indicated no specific date subsequent to the date of filing upon which the schedule should become effective. The question is raised as to whether such publications so filed became effective on date of filing or thirty days subsequent thereto: *Held*, That prior to August 28, 1906, as well as subsequent to that date, the

law required carriers amenable to its provisions to file with the Commission and post to the public schedules containing their terminal charges "and any rules or regulations which in any wise change, affect, or determine any part or the aggregate" of their rates, fares, and charges. The amended act prohibits carrier from engaging or participating in transportation of passengers or property, as defined in the act, unless the rates, fares, and charges upon which the same are transported have been filed and published in accordance with the provisions of the act.

(b) The Commission has decided that, excepting the first tariff under which a carrier engages in interstate transportation, a tariff that is filed without naming date on which it is to take effect is unlawful and never becomes effective, and now decides that publications that were used prior to the effective date of the amended act, that were filed subsequent to that date and which bore effective dates antedating the date of filing thereof, became effective thirty days subsequent to the date of filing the same. (See rulings 12 and 73.)

101. CANCELLATIONS IN TARIFFS MUST BE SPECIFIC AND COMPLETE.—Carrier's tariff contains certain rates. Joint agent's tariff canceled certain of those rates, but the carrier did not issue any corresponding amendment to its tariff, as is required by Rule 8, Tariff Circular 15-A. It is essential that when one tariff cancels a part of another tariff, specific reference to the tariff so affected and to the part thereof so canceled shall be given, and that, effective on the same date, supplement to the tariff so canceled in part shall show that the specific parts are canceled by, and that the rates will thereafter be found in ——— tariff, I. C. C. No. ———. In no other way can discriminations and complaints be avoided. The carrier knows that such parts of its tariff are to be canceled and that superseding rates are to be shown in another tariff. There is, therefore, no difficulty about arranging its supplement and furnishing it to the proper party to be filed with the issue that contains the superseding rates. (See rulings 50, 70, 104, and 239; Rule 8, Tariff Circular 15-A, amended accordingly; see Rule 8 of Tariff Circulars 17-A and 18-A.)

October 13, 1908.

102. FREE PASSES TO EX-EMPLOYEES.—Under the recent amendment to the antipass provision of section 1: *Held*, That a pass may be issued to a bona fide ex-employee of any carrier subject to the act, who is traveling for the purpose of entering the service of any such common carrier, whether such service has or has not previously been arranged for. (See ruling 158.)

October 16, 1908.

103. FREE PASSES TO FAMILIES OF EMPLOYEES.—

Upon an inquiry involving an interpretation of the recent amendment to the antipass provision of section 1, providing that free transportation may be given to the families of employees killed in the service of common carriers: *Held*, That the provision does not include the families of employees who died a natural death while in the service of common carriers. (See rulings 18, 173, 193, and 476.)

NOTE.—The amendatory act of June 18, 1910, authorizes free transportation to widows and minor children of deceased employees, the former during widowhood and the latter during minority.

November 9, 1908.

104. CONFLICT IN PASSENGER TARIFFS.—Certain fares of a carrier had been published in a joint agent's tariff and also in its own tariff. The carrier issued a new tariff canceling the fares in its own tariff, but did not secure their cancellation in the joint agent's tariff: *Held*, That the new tariff was unlawful because in conflict with the uncanceled tariff of the joint agent. (See rulings 50, 70, 101, and 239; also *Stilwell v. L. & N. R. Ry. Co.*, 19 I. C. C., 405.)

105. PASSENGER TICKET HONORED BY WRONG LINE.—A coupon reading over one line was honored through error by the conductor of another line running between the same points, and the latter called upon its conductor to make good the amount: *Held*, That the matter was one of discipline between the company and its conductor, and was not cognizable by the Commission. (See rulings 69 and 277.)

106. TARIFFS FOR THE TRANSPORTATION OF EXPLOSIVES.—Under a special act of Congress the Commission prescribed certain regulations governing the transportation of explosives. Such regulations are law to the carriers as well as to the shippers, and they can not be changed except by act of Congress or by this Commission. It is therefore not considered necessary for each carrier to file with the Commission copy of such regulations as a tariff issue, but it is considered necessary that each tariff which contains rates for the transportation of explosives shall also contain notice that such rates are applicable in connection and in compliance with the regulations fixed by the Interstate Commerce Commission. This provision must be in every such tariff issued hereafter, and must be incorporated in existing tariffs by reissue or supplement as early as practicable.

If tariff is governed by classification it will be sufficient to include the notice in the classification referred to as governing the tariff. (Rule 4, Tariff Circular 15-A, amended accordingly; see also Rule 65 of Tariff Circular 18-A; also see ruling 388.)

November 10, 1908.

107. REDUCED FARES FOR THE DEPORTATION OF CHINESE NOT PERMISSIBLE.—Special fares can not lawfully be accorded by carriers for the transportation of Chinese to the ports for deportation, even though the expense is paid by the government.

Provisions for the subsistence and care in transit of Chinese being deported are matters of contract between the carrier and the government, and need not be published in the tariffs.

108. HOURS-OF-SERVICE LAW—FERRY EMPLOYEES.—The hours-of-service law does not apply to employees on a ferry, even though the ferry be owned by a railroad company. The law applies to employees connected with the movement of trains, and hence does not embrace employees engaged only in the operation of a ferry. This ruling does not apply to car ferries. (See ruling 287.)

109. TRANSPORTATION OF HOUSEHOLD GOODS OF AN EX-EMPLOYEE.—A carrier gave free transportation to an employee and his household effects to the point where he was to be employed, and later dismissed him: *Held*, That the Commission can not require the carrier to return the household effects free of charge to the point from which they were first moved. (Reaffirmed by ruling 255; see also ruling 208b.)

110. REPAYMENT BY CARRIER ON ACCOUNT OF SWITCH TRACK.—A shipper in 1895 paid \$200 to a carrier as part of the cost of constructing a spur track to its warehouse. Upon application of the carrier for permission to repay the amount to the shipper: *Held*, That the repayment would be unlawful unless the shipper had some equity or ownership in the track which he could transfer to the carrier in consideration of the payment. (See ruling 512.)

November 12, 1908.

111. CHANGE OF RATE WHILE SHIPMENT WAS ON THE OCEAN.—A shipment of linoleum left Hamburg on July 4, at which time there was in effect a published through rate to San Francisco via New Orleans of \$1.10. When the shipment reached New Orleans the through rate had been canceled, leaving in effect a local rate from New Orleans to San Francisco of 90 cents. Upon application for permission to refund down to the \$1.10 through rate: *Held*, That the application must be denied. (See *Borgfeldt & Co. v. Southern Pacific Co.*, 18 I. C. C., 553.)

112. CARETAKERS FOR BEES IN HIVES.—Upon inquiry from a classification committee it was agreed that tariffs may lawfully provide for free transportation of caretakers of bees in hives.

113. ERRORS OF CARRIER'S AGENTS.—Agents of carriers sometimes misroute passengers or by other error cause passengers to pay additional and unnecessary transportation charges. In the view of the Commission such cases are governed by the principles announced in Rule 70, Tariff Circular 15-A. (Reaffirmed by ruling 167; see also rulings 247, 266, and 277. Rule 70 of Tariff Circular 15-A is now published as ruling 214 of this Bulletin; also see *L. & N. R. R. v. Maxwell*, 237 U. S., 94.)

114. RECONSIGNMENT OF REFUSED SHIPMENTS.—It appears that in some instances carriers are willing to re consign refused shipments to points beyond the first destination and to apply the tariff rate from point of origin to final destination, even though it be lower than the rate to first destination, but they do not feel at liberty to do so in view of paragraph 2 of Rule 78, Tariff Circular 15-A. It is optional with the carrier whether or not it will grant reconsigning privilege. If granted, the conditions governing it must be in tariff, and if charges for back haul or out-of-line haul are to be assessed, rule must so state.

It is of course understood that satisfactory showing of genuine transaction and actual refusal by consignee will be required. (Rule 78, Tariff Circular 15-A, amended accordingly; now published as Rule 67 of Tariff Circular 18-A; see rulings 41 and 145.)

115. REDEMPTION OF UNUSED PASSENGER TICKETS.—Because of illness or other compelling reason a passenger sometimes abandons a trip short of destination to which fare has been paid, or returns from a point short of that to which he has purchased a round-trip ticket. On the question of the right of the carrier to refund fare in such a case the Commission decides that when the passenger has paid more than lawful tariff fares for the journey actually made the carrier may lawfully redeem unused ticket and make refund on the basis of lawful tariff fare for the service actually rendered, when investigation develops clear identity between purchaser of ticket and the one to whom refund is made. (Amending ruling 76; see also rulings 265, 303, and 350.)

November 13, 1908.

116. REFUND OF UNUSED PORTION OF ROUND-TRIP TICKET.—Because of a washout of a portion of its tracks a carrier was unable to operate trains and thus return a passenger over that route within the time limited in a round-trip ticket which she held. A circuitous route was open to her, but on account of her age and the condition of her health she did not think it safe to take so long a journey, and therefore, waiting until the tracks had been repaired,

which was after the expiration of the time limit of the ticket, she purchased a one-way ticket back to her home: *Held*, That as the carrier was not able to furnish the service which it undertook to furnish within the time limited in the round-trip ticket, it might lawfully refund the extra return fare so paid by the passenger. (See ruling 266.)

117. DEMURRAGE WAIVED UNDER SPECIAL CIRCUMSTANCES.—A sidetrack to an industry upon which a carrier had delivered 18 heavily loaded cars sank because of the marshy character of the roadbed: *Held*, That the carrier may refund demurrage collected for the necessary detention of the cars while the sidetrack was being rebuilt. (See note to ruling 242.)

118. REDUCED RATES FOR MUNICIPAL GOVERNMENTS IN FOREIGN COUNTRIES ADJACENT.—Upon inquiry: *Held*, That the reduced-rate transportation for municipal governments permitted under section 22 of the act does not apply to municipal governments in foreign countries adjacent.

119. RESHIPPING OF GRAIN.—Upon inquiry whether a proposed tariff rule providing that "the rate to be applied on all outbound transit grain of record shall be the specific rate that is lawfully in effect from Chicago at the time the grain is reshipped" may lawfully be incorporated in a tariff: *Held*, That the Commission can not sanction the rule, and that the grain can move only as a through movement on the through rate in effect at the time it starts, or as a local movement. (See *In re Milling-in-Transit Rates*, 17 I. C. C., 113; *Liberty Mills v. L. & N. R. R. Co.*, 23 I. C. C., 184; and *Board of Trade of City of Chicago v. A. A. R. R. Co.*, 39 I. C. C., 651.)

120. RESPONSIBILITY OF CARRIER FOR FAILURE TO FURNISH PROPER CARS UNDER RATE CONFINED TO CARS OF A CERTAIN CLASS.—Certain rates on coal published by a carrier to points on a connecting line were expressly limited to shipments "loaded in box or stock cars only," because the connection refused to handle coal shipments in open cars. Upon demand for cars for a shipment to such points the carrier, instead of furnishing box cars to which the rate applied, furnished coal cars, which carried a higher rate: *Held*, That the carrier having issued the tariff itself, and having furnished cars that did not comply with the tariff requirements, was responsible for the excess charges.

November 14, 1908.

121. A PRIVATE SIDETRACK DEFINED.—A private sidetrack is one that is outside the carrier's right of way, yard, and ter-

minals, and of which the railroad does not own either the rails, ties, roadbed, or right of way. (Modifying ruling 79-a; see note to ruling 242.)

122. A PRIVATE CAR OWNED BY ONE SHIPPER BUT USED BY ANOTHER.—A private car owned by one shipper but used with his consent by another shipper dealing in a different commodity is not a private car as that phrase has been defined by the Commission in connection with demurrage charges. (Qualifying ruling 79b; see also ruling 128.)

123. DEMURRAGE ON PRIVATE CARS TEMPORARILY OUT OF SERVICE STANDING ON CARRIERS' STORAGE TRACKS.—Demurrage is a charge for detention of cars that have been set by carrier for loading or unloading. Private cars are subject to demurrage rules the same as is the carriers' equipment except when the private car is standing on the private sidetrack. It is not necessary to charge demurrage either on carriers' equipment or private cars when same are temporarily out of service and standing idle upon the storage tracks of the carrier unless provision for such charge is included in carriers' demurrage rules. (See rulings 79, 222, 270, and note to ruling 242; see also Rule 75 of Tariff Circular 18-A; see also Code of National Car Demurrage Rules.)

December 7, 1908.

124. FREE TRANSPORTATION OF MATERIAL AND WORKMEN.—A carrier, not being able to obtain ice for refrigeration purposes at a division point, entered into a contract under which a private company there undertook to build a plant and manufacture ice. The contract provided that in case it was necessary to enlarge the plant to meet the increasing needs of the carrier, the carrier would transport free of charge the materials and mechanics necessary to make the enlargement. An enlargement was required and made, and upon application by the carrier for permission to refund the freight charges on the materials used and the passenger fares paid by the mechanics employed on the work: *Held*, That the application must be denied, it appearing that the ice plant also sold ice commercially in the community in question. (Compare ruling 87.)

December 8, 1908.

125. FAILURE TO VALIDATE PASSENGER TICKET.—Upon inquiry: *Held*, That a carrier might lawfully incorporate in its tariff a rule providing that when a passenger is compelled to pay the regular return fare because of his failure to have his round-trip ticket validated at the return starting point, the carrier will refund

the extra fare upon the filing with it of an affidavit by the holder of the round-trip ticket, certifying that the ticket had been used in accordance with all the conditions of the tariff and the contract on the ticket except as to the matter of validation. (See rulings 75 and 167.)

126. REFUND OF OVERCHARGE ON SHIPMENT TO FOREIGN COUNTRY ADJACENT.—An overcharge was collected on a shipment of tobacco to a point in Mexico. On application of the American carriers, in which the Mexican lines refused to join: *Held*, That the American lines might refund such part of the total overcharge as their division of the through rate bears to the entire through rate.

127. DAMAGE TO FRUIT BY DELAYED NOTICE OF ARRIVAL AT DESTINATION.—An express company undertook to notify the consignee of the arrival at destination of a shipment of strawberries, but failed for some days to effect notice partly because of an erroneous address on a postal card: *Held*, That the damage resulting from the delay was not due to any violation of the act to regulate commerce and therefore was not cognizable by the Commission. (See ruling 366.)

December 10, 1908.

128. INCORPORATION IN TARIFFS OF AMENDED DEFINITION OF A PRIVATE CAR.—On June 2, 1908, the Commission amended its definition of a private car as used in the opinion *In the Matter of Demurrage Charges on Privately Owned Tank Cars*, 13 I. C. C., 378, to include also cars owned and leased to shippers by private corporations. It is held that this amendment shall be incorporated in all new car-service rules dealing with this subject, and that all rules shall be so amended as to include leased cars on or before the next fiscal year, July, 1909. The Commission rules, however, that upon the amendment of tariffs as indicated, such leased cars, under the conditions dealt with in case No. 933, may be treated as private cars and be exempt from demurrage when standing on private tracks. (See rulings 79b, 122, and 222; see also note to ruling 242.)

January 4, 1909.

129. SIGNATURE TO APPLICATIONS FOR SPECIAL REPARATION.—In case of the absence, illness, or disability of the executive or general officer of a carrier by whom special reparation applications are customarily made to the Commission, such applications may be signed in the name of such executive or general officer

by his chief clerk, provided the executive or general officer has previously filed with the Commission written authority for the chief clerk to append his signature in such cases.

130. MAINTENANCE OF RELATIVE ADJUSTMENT IN ISSUING TARIFFS TO CONFORM WITH FORMAL ORDER OF THE COMMISSION.—In establishing rates or regulations under an order of the Commission in a formal case, carrier or carriers that are actually and on the record parties to the case, or that are lawful parties to a joint tariff in which the rate or regulation that is prescribed is published by some carrier that is party to the case, may include in the change or changes made in compliance with the Commission's order commodity or commodities that are grouped with that or those which are specified in the order; and may also include adjustment at other points in order to preserve established grouping or relation of points, and may also include adjustment of rates to same points on other commodities for the purpose of maintaining established relation of rates between commodities. *Provided*, all such changes made by authority of this rule shall be effected by reductions in rates or charges.

If carrier that is not so party to the case or to the joint tariff desires to make on less than statutory notice the same changes that are made under the order by carrier that is party to the same, it must secure special permission so to do. (See rulings 14, 200a, and 396.)

131. "GROSS TON" AND SIMILAR PHRASES, AS USED IN TARIFFS, DEFINED.—The term "per ton" and "net ton," when used in tariffs, will, in the absence of qualifying words, be held to mean a ton of 2,000 pounds. The terms "gross ton" and "long ton" and "ton of 2,240 pounds" will be held to mean a ton of 2,240 pounds.

January 5, 1909.

132. REFUND ON GRAIN DOORS.—Where a carrier has established a tariff provision in conformity with the Commission's rule with respect to the payment by carriers of the cost of grain doors, and it appears that prior to the publication of such a tariff it had been the practice of carrier to pay for grain doors furnished by shippers: *Held*, That applications may be made on the special reparation docket for authority to refund on the basis of the tariff provision for grain doors furnished within six months prior to the effective date of the tariff rule. (See rulings 19, 78, 267, 292, and 360.)

January 7, 1909.

133. OVERCHARGE ON ONE SHIPMENT OFFSET AGAINST UNDERCHARGE ON ANOTHER.—(Superseded by ruling 323.)

134. FREE TRANSPORTATION WHEN TAKING MEASUREMENTS OF EMPLOYEES FOR UNIFORMS.—A carrier requires that certain of its employees shall wear uniforms made from goods of texture and color and according to specifications prescribed by the carrier. The carrier employs a certain firm to make such uniforms for any and all of its employees at agreed-upon prices. A man is sent over the line to take the measures and orders of employees for such uniforms. The employee generally gives an order on the carrier for the amount of his order, which amount the carrier deducts in whole or in part from wages due the employee and the carrier pays the firm for the uniform.

We are asked if the carrier may lawfully continue granting free transportation to man so taking measures and orders for uniforms: *Held*, That having its employees properly uniformed is a duty of the carrier in the interest of the carrier and of its patrons, and therefore the man so sent over its lines for the purpose named is, for that purpose and while engaged in that work, performing a duty devolving upon that carrier and may lawfully be given free transportation to the extent necessary for the performance of that duty, provided he does not in the same connection receive any orders from or sell any goods to persons who are not bona fide employees of that carrier. (See rulings 2083 and 346.)

January 27, 1909.

135. DEMURRAGE ON INTERSTATE SHIPMENTS.—Rule in Supplement No. 2 to Tariff Circular 15-A, entitled "Demurrage on interstate shipments," is amended by adding thereto the following:

It is not permissible to provide that demurrage *may* be refunded or waived in case of inclement weather and leave it to the judgment of some person to determine what constitutes inclement weather. It is permissible to provide that demurrage charges *shall* be waived or refunded in case of weather interference of such severity as to damage the freight in handling it into or from the car, or when shipment is frozen so as to prevent or seriously hinder unloading, or when because of flood or high water, or snowdrifts which it is the carrier's duty to remove, it is impracticable to get to car for loading or unloading.

(Amending ruling 223*c*. See ruling 358 and see also important note to ruling 242. Rule in Supplement No. 2, referred to, is now reported as Rule 75 of Tariff Circular 18-A. See Code of National Car Demurrage Rules.)

136. ACCRUED CLAIMS NOT INVALIDATED BY SUBSEQUENT CANCELLATION OF ABSORPTION RULE.—A tariff providing for the absorption of inbound switching charges on certain traffic also provided that they would not be absorbed when the expense bills therefor were presented more than six months after their date. Within six months after certain switching services had been performed bills therefor were presented, but the carrier refused payment on the ground that during the interval the absorption rule referred to had been canceled: *Held*, That the subsequent cancellation could not invalidate a claim already accrued.

February 2, 1909.

137. INITIAL CARRIER LIABLE FOR MISROUTING.—An initial carrier delivered a shipment to a connection, but did not give it any routing instructions beyond noting on the waybill the through rate via the cheaper of two available routes. The connecting carrier sent it over the route yielding it the greater revenue, but carrying the higher through rate: *Held*, That the initial carrier is liable for the misrouting. (Construed and amended by ruling 286*c*. See ruling 199.)

138. CHARGES FOR MOVING PRIVATE CAR.—A tariff provided for the movement of a private car or sleeper at the regular fare for each occupant with a minimum of 20 adult fares and a minimum collection of \$25 for each movement. Its direct line being blockaded by a washout, a carrier sent individual passengers around a longer route over its lines at the short-line fare, but charged the occupants of such private car then on its lines the full mileage rates for the longer haul: *Held*, That under the tariff rule the car and party should have moved as the individual passengers were moved under the same circumstances; and that the short-line fare ought also to have been applied to the private car and party. (See ruling 213.)

139. STATUTE OF LIMITATION.—(Construed and amended by Ruling 286 *a*, *b*.)

140. MISROUTING SHIPMENT THAT COULD MOVE INTRASTATE.—A shipment destined to another point in the same state was delivered to a carrier without routing instructions. It was sent by a route which took it outside the state lines, and required the payment of an interstate rate higher than the state rate which would have applied on an available intrastate route: *Held*, That the Commission recognizes the right of the shipper to route his shipment, which in this instance the shipper neglected to do; that the shipment moved interstate, and that the Commission can not say

that the interstate line can apply any other than its lawfully published tariff rate except under special permission or order of the commission. (See rulings 214 and 419.)

141. TARIFF IS NOT GOVERNED BY CLASSIFICATION EXCEPT WHEN SO SPECIFIED.—A tariff naming commodity rates on strawberries in carloads fixed a certain rate on a minimum of 100 crates, and a lower rate on a minimum of 200 crates. The classification in that territory provided that carload rates would apply only when the carload is shipped from one station in one day by one shipper to one consignee and destination. The shipments in question belonged to different owners, but with the knowledge and consent of the carrier and under the admitted intent of the tariff, were loaded and forwarded as carload shipments. They were loaded to or beyond the minimum of 200 crates per car: *Held*, That they were entitled to the application of the lower rate on the basis of the 200-crate minimum.

February 8, 1909.

142. BUNCHING CARS IN TRANSIT.—Upon an informal complaint that cars were delayed in transit and delivered by a carrier in such number as to exceed the shipper's facilities for unloading within the free time: *Held*, That tariffs ought to contain a rule providing that when, by fault of the carrier, cars are bunched in excess of the shipper's or consignee's ability to handle them within the free time, demurrage will not accrue. In the absence of such a rule the Commission can determine the reasonableness of such a practice only upon complaint filed. (See note to ruling 242; also Code of National Car Demurrage Rules.)

143. MISROUTING OF COMPANY MATERIAL.—The initial carrier, disregarding instructions to route a shipment through a particular junction, moved it to destination over its own lines, the rates over the two routes being the same. Although the shipment was consigned to a private person, it was in fact the property of the connecting line, which therefore could have hauled it free of charge from the junction point to destination. Notwithstanding the fact that the initial carrier had no notice and was not chargeable with notice that it was company material: *Held*, That the initial line is liable for the additional charges on the ground that a carrier exercising the right, under Rule 70 of Tariff Circular 15-A, to dictate intermediate routing must make its election at the time it accepts the shipment, and that if the carrier accepts the shipment with specific instructions it must so move the traffic or bear the damages arising out of its departure from the instructions. (Rule 70 is

reported as ruling 214 of this Bulletin. See *Fullerton-Powell Hardwood Lumber Co. v. M. & N. F. R. R. Co.*, U. R. Op. A-367; *St. Louis Southwestern Ry. Co. v. P. & R. Ry. Co.*, U. R. Op. A-783; and *In the Matter of Transportation of Company Material*, 22 I. C. C., 439.)

144. SWITCHING SHIPMENTS UPON WHICH TRANSPORTATION CHARGES HAVE NOT BEEN PAID.—A shipment was forwarded with instructions to give delivery on a certain road. The car moved over the proper route to destination, and was tendered for switching to the road indicated in delivery directions. Under long-established custom, it declined to assume responsibility for charges on the shipment and refused to accept the car until transportation charges had been paid. The carrier that brought the car in mailed a notice to the address of consignee, who was not known, and before the difficulty was straightened out demurrage accrued: *Held*, That the demurrage charges lawfully accrued and should stand.

145. A TARIFF RULE THAT IS UNLAWFUL *PER SE* CAN NOT BE USED.—A tariff contained a rule providing that:

When freight can not be disposed of at point held for sufficient amount to realize by sale both freight and car service, or storage charges, demurrage charges may be refunded, waived, or canceled.

Held, That the performance of a transportation service determines the obligation of the carrier to collect and of the shipper to pay the published rates therefor and no subsequent fact, having no relation to the service, can lawfully be made the basis for a refund or other departure from such rates. The provision is therefore unlawful *per se* and can not be accepted as authority for a waiver, refund, or cancellation of the tariff charges even as to a shipment made while the provision was contained in the published tariff. (See note to ruling 242; compare ruling 41; also see ruling 114.)

146. IMPROPER AND UNLAWFUL TARIFF PROVISION.—A carrier's tariff contained the following rule:

The ——— Railway reserves the right to route through to destination property delivered to it for transportation at the through rates shown in this tariff; and every carrier participating in such transportation shall have the right, in cases of necessity, including floods, embargoes, and blockades, to forward said property by any carrier between the point of shipment and the point to which the rate is given. All additional risks and increased expense incurred by reason of change in route in cases of necessity, including floods, embargoes, and blockades, shall be borne by the owner of the goods and be a lien thereon.

Held, That this rule is improper and unlawful. (Compare ruling 183; see also ruling 83.)

February 9, 1909.

147. RATE MUST APPLY ACCORDING TO MOVEMENT.—Upon the arrival of a shipment at the junction designated in the consignor's routing instructions it appeared that, because of a washout on its lines, the connecting carrier could not accept the movement. The shipper thereupon assumed custody of the shipment and forwarded it by a water line: *Held*, That the carrier must collect its local rate to the junction point and can not apply its proportion of the through rate. (See ruling 83.)

148. SIDE TRIPS MUST BE SHOWN IN THROUGH TARIFFS.—(Restated in ruling 177.)

149. AMENDED RULE 14 OF THE RULES OF PRACTICE.—(See current Rules of Practice.)

February 11, 1909.

150. CARETAKERS UNDER SECTION 22 OF THE ACT.—Section 22 of the act provides—

That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, state, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation.

Held, That the words "and necessary agents employed in such transportation" modify the entire preceding part of the section, and that the necessary caretakers of property transported for the United States, state, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, may legally be carried free or at reduced rates by carriers subject to the act, as well as the caretakers of destitute and homeless persons transported by charitable societies. The words "necessary agents" as used in this section are interpreted to mean those persons necessary to the safe and proper care of the property during the period of transportation, and may not properly be extended to cover any persons other than those who actually accompany such property and are actually necessary to its care. (Compare ruling 171.)

March 1, 1909.

151. RELIEF OF AGENT DOES NOT RELIEVE CARRIER.—Through error an agent inserted a route in a round-trip ticket over which the published fare was \$10 in excess of the amount actually collected from the passenger. Upon the request of the car-

rier for permission to relieve its agent of the uncollected undercharge: *Held*, That the collection of the amount from the agent would not in any way relieve the carrier of its responsibility for failing to collect the full tariff fare from the passenger. (See *L. & N. R. R. v. Maxwell*, 237 U. S., 94.)

152. RIGHT OF SHIPPER TO PAY FREIGHT CHARGES ON FICTITIOUS WEIGHT IN ORDER TO RECEIVE FREE ICING.—A consignor having a shipment of dressed poultry weighing 9,910 pounds offered to pay freight charges on the basis of 10,000 pounds in order to have the advantage of free icing under a tariff rule providing that the cost of icing would not be assumed by the carrier when the weight in each car was less than 10,000 pounds; but the carrier refused to accept the 77 cents additional freight charges and compelled the shipper to pay \$5.25 for the icing: *Held*, In analogy to the common practice of carriers to apply the carload rate and minimum on shipments of less weight where the application of the less-than-carload rate would result in higher charges, that such a tariff rule, if susceptible of the construction placed upon it by the carrier, is unreasonable and ought to be amended.

April 5, 1909.

153. CARRIER WHEN A SHIPPER CAN NOT EVADE PAYMENT OF LAWFUL RATES OF A CONNECTION BY SECURING TRACKAGE RIGHTS OVER ITS LINE.—An interstate carrier desiring stone for ballast on its right of way, leased a trackage right over a short connecting line leading to a quarry, and proposed to purchase the stone at the quarry and haul it to its own line with its own crews and equipment: *Held*, That the Commission must decline to sanction the arrangement for the reason that the carrier under the circumstances is a shipper and the proposed arrangement is a mere device to evade the payment of the lawful rates and would result in unlawful discrimination. (See rulings 225, and 439; also see rulings indexed under Company Material and Divisions.)

154. TICKETS PURCHASED AT THE REGULAR PUBLISHED FARE MAY BE GIVEN BY A LAND COMPANY TO PROSPECTIVE PURCHASERS.—A land company having no relations, direct or indirect with a carrier has a lawful right to pay all or any part of the carrier's lawful transportation charges for such persons as it may choose to supply with tickets.

155. MOVEMENT BETWEEN PORTS IN CONNECTION WITH RAIL HAULS TO AND FROM INLAND POINTS SUBJECT TO THE ACT.—Traffic moving by rail from an inland point to a port and thence by water to another port, or moving by water

from one port to another port and from the latter port to an inland point by rail, and which does not pass into the possession or custody of the owner or his agent at the port, is, when interstate traffic, subject to the act and under the jurisdiction of the Commission. (See rulings 66, 201, 354, 401, and 422.)

156. DELIVERING CARRIER MUST COLLECT LAWFUL CHARGES UPON PREPAID SHIPMENTS.—Upon inquiry: *Held*, That it is the duty of the delivering carrier to collect the lawful rates on prepaid shipments and to correct any errors that may have been made by the agents of the initial carrier in billing or in the collection by the initial carrier of the prepaid charges. (Reaffirming ruling 16; see ruling 314; also *Western Classification Case*, 25 I. C. C., 475.)

April 6, 1909.

157. FREE TRANSPORTATION FOR OFFICERS AND AGENTS OF EXPRESS COMPANIES AND THEIR FAMILIES.—Upon inquiry it was *Held*, That a carrier subject to the act may lawfully give free or reduced rate transportation to the officers and agents, and their families, of express companies that are subject to the act. The Commission's decision in formal case No. 1985. (*In re Contracts for Free Transportation*, 16 I. C. C., 246, is not to be understood as contradicting or rescinding this ruling. See ruling 361; also ruling 513.)

158. FREE TRANSPORTATION TO FAMILIES OF EX-EMPLOYEES.—Free transportation may lawfully be accorded to members of the family accompanying an ex-employee traveling for the purpose of entering the service of any common carrier subject to the act. (See ruling 102.)

159. BILL OF LADING SPECIFYING A ROUTE, BUT NAMING A RATE APPLICABLE OVER ANOTHER ROUTE.—(Canceled by ruling 474.)

160. HIGHER RATES WHEN SHIPMENTS ARE TENDERED WITH OTHER THAN UNIFORM BILL OF LADING.—A carrier's tariff provided higher rates on shipments not tendered with a uniform bill of lading: *Held*, That the tender of a shipment accompanied by other than a uniform bill of lading may not be taken by the carrier as evidence of the shipper's election to use the higher rate. The carrier must direct his attention to the fact that a lower rate is available under the uniform bill of lading. (Compare ruling 226.)

April 12, 1909.

161. TELEPHONE AND TELEGRAPH LINEMEN NOT ENTITLED TO FREE TRANSPORTATION.—(Telegraph and telephone companies are brought within the law by the amendatory act of June 18, 1910; see antipass provisions of section one. Also see rulings 305, 95*a*, par. 2, 219, and 364.)

162. MUNICIPAL FERRIES SUBJECT TO THE ACT WHEN PARTICIPATING IN TRANSPORTATION DEFINED BY THE STATUTE.—The city of New York operates a municipal ferry between St. George and the foot of Whitehall street. The Staten Island Rapid Transit Company sells commutation tickets from Perth Amboy to the Whitehall street pier, and files a tariff of local and joint passenger fares to cover such transportation. Upon inquiry from the commissioner of docks: *Held*, That the municipality must join in the tariffs. (Compare ruling 89.)

163. REFUND ON ACCOUNT OF FULL-FARE TRANSPORTATION USED BY A BOY UNDER 12 YEARS OF AGE NOT PERMISSIBLE.—A purchaser of two full-fare tickets called upon the initial carrier for a refund, after they had been used, on the ground that he had asked for a ticket and a half, and that he had used one of the full-fare tickets for his son, who was under 12 years of age. The agent of the carrier denied that a half-fare ticket had been requested, and the fact appeared that the father had accepted and paid for two full fares: *Held*, That the Commission would not authorize a refund.

164. A CARRIER MUST PUBLISH FARES AND OFFER TO THE PUBLIC RAILROAD TICKETS INDEPENDENT OF OMNIBUS ARRANGEMENTS.—A carrier under a tariff provision sells excursion tickets to a point on its line to which is attached a coupon for carriage from that point to Luray Caverns and return on the omnibuses of a designated transfer company: *Held*, That this is not a discrimination under the act against another transfer company. But the Commission holds that while such tickets may lawfully be sold, the carrier must publish the railroad fare to the point in question and separately show bus fare beyond, and must also have on sale tickets to that point at the rate named without bus coupons attached.

165. OFFICERS AND EMPLOYEES OF A RAILROAD RECEIVER ENTITLED TO FREE TRANSPORTATION.—Upon inquiry from a receiver duly appointed by the court to manage the property and assets of a railroad company: *Held*, That officers and employees engaged under the receiver in the operation of the railroad

occupy the same position under the antipass provision of the act as do the officers and employees of any other railroad. (See ruling 436.)

April 13, 1909.

166. RETROACTIVE APPLICATION OF RECONSIGNING PRIVILEGE NOT PERMISSIBLE.—Adhering to *Conference Ruling 6*, the Commission will not sanction the application, retroactively, of a reconsigning privilege, even though it had long been the custom of the carrier to permit reconsignment without tariff authority. (See ruling 77.)

167. A PASSENGER WRONGFULLY DEPRIVED OF THE BENEFIT OF RETURN COUPON OF A ROUND-TRIP EXCURSION TICKET MAY HAVE REPARATION.—A passenger holding a round-trip ticket on the certificate plan, or a round-trip ticket requiring validation, was, through ignorance or fault of a carrier's agent, deprived of the benefit of the reduced fare on the return journey and was compelled to purchase a full-fare ticket: *Held*, That such cases are analogous to the misrouting of freight and ought to be adjusted on the general principle underlying Rule 70 of Tariff Circular 15-A (ruling 214 of this bulletin). The Commission, therefore, authorizes carriers in such cases, without a special permissive order, to refund to the passenger the difference between the total fare paid by him and the reduced rate which he would have enjoyed except for the carrier's error; and the carrier at fault must bear the full burden without recourse upon any other road participating in the carriage. (Reaffirming ruling 113. See also rulings 75, 125, 247, 266, and 277. Also see *L. & N. R. R. v. Maxwell*, 237 U. S. 94.)

168. EFFECT OF TRACKAGE ARRANGEMENTS UNDER THE ACT TO REGULATE COMMERCE WITH RESPECT TO SHIPMENTS ROUTED BY SHIPPER.—The Mineral Point & Northern Railway Company has trackage arrangements with the Chicago, Milwaukee & St. Paul for the joint use of the latter's tracks between Highland Junction and Mineral Point, Wis. Upon inquiry from the general manager of the first-named road as to whether the St. Paul rightfully may refuse to turn shipments over to it at Highland Junction, when so routed, and retain possession of the revenue for the haul from that station to Mineral Point: *Held*, On the understanding that the shipments in either case would be delivered at the same warehouse and at the same rate, that under the act to regulate commerce no obligation rests on the Chicago, Milwaukee & St. Paul to turn over shipments to the Mineral Point & Northern Railway at Highland Junction for transportation to Mineral Point.

169. FREE PASSES TO EMPLOYEES OF A CAR-LIGHTING COMPANY UNLAWFUL.—Upon inquiry from a car-lighting company it was *Held*, That its experts for the testing and observation of the performance of its lights on trains are not employees of the carrier, and are not therefore entitled to free transportation. (See ruling 95.)

170. IMPORTED MERCHANDISE NOT ENTITLED TO INLAND PROPORTIONAL RATE WHEN THE TRANSPORTATION FROM THE PORT IS PURELY LOCAL.—An importer of flax, after unloading a cargo at the port, sold it, and the purchaser some months later sold a part of the original shipment to a manufacturing company, by which it was shipped to a point in the Middle West at the regular local rate of the carrier that took the movement. At the time there was in effect an inland proportional rate from the port to destination: *Held*, That the movement from the port was a separate and distinct transaction upon which the local rate was the only lawfully applicable rate.

May 4, 1909.

171. FREE TRANSPORTATION TO SHIPPERS OF PERISHABLE FREIGHT.—The tariffs of a carrier included a refrigeration service, under rates named therein, on perishable freight. Upon inquiry whether the shippers or their agents might have free transportation to inspect the reicing of the cars: *Held*, That it does not appear that they are necessary caretakers within the meaning of section 1 of the act. (Compare ruling 150.)

172. RATE IN EFFECT ON RECEIPT OF SHIPMENT IS THE LAWFUL RATE.—Freight was received by a carrier and bills of lading were issued therefor on December 21 and 29, 1908. The freight was actually moved on January 1, 1909, on which date a lower rate went into effect: *Held*, That the rate in effect on the date the carrier received the property for transportation is the lawful rate.

173. FREE TRANSPORTATION FOR FAMILY OF DECEASED EMPLOYEE.—An engineer of one carrier having ended his run for the day was preparing to return to his home over another line the train service of which was more convenient. He lost his life by inadvertently stepping in front of a train of this carrier. Upon inquiry whether under the recent amendment to the antipass provision of section 1 free transportation might be given to his widow and children by the road by which he had been employed: *Held*, That the case comes within the spirit and meaning of the amendment. (The amendment referred to is in the act of April 13, 1908. See rulings 18, 103, 193, and 476.)

174. FREE TRANSPORTATION OF FAMILY OF EMPLOYEE.—May an employee use free transportation for the remains of his wife after they had been temporarily interred? *Held*, That within the meaning of section 1 of the act the deceased wife of an employee may be regarded as a member of his family until given permanent burial. (See ruling 95c.)

175. CARLOAD SHIPMENTS.—A coffee broker purchased from three different merchants at New York three lots of coffee for shipment to one customer as one carload. The three lots were delivered to the carrier under circumstances that would have entitled them to go to destination as a carload shipment had proper instructions been given. Because of the failure of the shipper's agent to give such instructions the three lots went forward to destination as three shipments, at the less-than-carload rate. Upon inquiry by the carrier whether it might assess the carload rate: *Held*, That freight charges must be collected on the basis of the less-than-carload rate.

176. FREE OR REDUCED-RATE TRANSPORTATION TO AND FROM EXHIBITIONS.—Specimens of ore that are not to be offered for sale but are intended exclusively for exhibition at the Chamber of Mines at Los Angeles may be carried free of charge or at reduced rates, under section 22 of the act.

May 10, 1909.

177. SIDE TRIPS NOT SPECIFICALLY SHOWN IN A THROUGH TARIFF.—Modifying Conference Ruling No. 148, it is *Held*, That a note in a through tariff providing that passengers purchasing through tickets thereunder shall be entitled to such side-trip privileges as are stated in the individual tariffs, on file with the Commission, of the carriers that are parties to the through fares, is a sufficient compliance with the requirements of the law and with the rules of the Commission.

178. USE OF MILEAGE TICKETS IN NEW TERRITORY.—A tariff authorizes the sale of mileage tickets good between points within a specified limited territory. Subsequent to the date upon which such a ticket is sold and prior to the date of its expiration the tariff is amended so as to include additional territory. May such mileage ticket be thereafter honored for transportation between points in the added territory? *Held*, That the terms of the contract of original sale must be adhered to unless the amendment to the tariff specifically authorizes honoring outstanding tickets between points in the added territory.

179. TARIFFS PROVIDING FOR TRANSPORTATION OF CARETAKERS IN PASSENGER CARS.—When an express company provides in its tariff for free transportation for caretakers in charge of live stock, poultry, or fruit, and the railroad company over whose lines such express company operates provides in its tariff that such caretakers may be permitted to ride in passenger cars, the tariff of the express company and that of the railroad company must give reference to each other.

180. LESSEE ROAD NOT SERVING PUBLIC AS COMMON CARRIER.—For operating purposes only a carrier leased 20 miles of its line to another railroad company. The contract required the lessee, for an agreed compensation to be paid to it by the lessor, to operate the lessor's trains and to maintain its way, tracks, and appurtenances, the rates and charges to be collected by the lessor and the lessee to have no direct dealings with the public. On the facts as stated in the inquiry: *Held*, That the lessor must publish the rates, fares, and charges, and the lessee need not be a party to the tariffs nor concur therein, but is simply a contractor performing certain services for the lessor. (Compare ruling 229.)

June 7, 1909.

181. SUBSTITUTION OF TONNAGE.—(Withdrawn February 10, 1913; see *The Transit Case*, 26 I. C. C., 204, 210.)

182. SALE OF TICKETS AFTER DEPARTURE OF LAST TRAIN ON FINAL SELLING DATE.—Tariff quoting passenger fares provides that tickets shall be on sale between certain specified dates and that they shall be good going for a specified period, including the date of sale. Passenger desiring to take advantage of such fare applied for such ticket on the last day of sale and after the last train for the day had departed from that station. Agent refused to issue the ticket desired. The time limit specified in the tariff was sufficient to carry passenger through to destination within that limit even if he left the initial point on the day following the last date of sale. Tariff did not require that journey should commence on date of sale of ticket: *Held*, That agent should have issued the ticket requested, the time limit thereunder being sufficient to carry passenger through to destination by his starting on the following day, and the tariff containing no requirement as to date upon which journey should begin: *Held further*, That if tariff had provided that journey must commence on the day of sale of ticket, agent could not legally have issued such ticket after the last train for the day had departed on the last date of sale.

183. RESERVATION OF RIGHT TO ROUTE SHIPMENTS.—The following rule in a published tariff was approved as lawful, subject to complaint by shippers:

The A. & B. Railroad Company reserves the right to route through to destination property delivered to it for transportation at the through rates shown in this tariff, and every carrier participating in such transportation shall have the right, in cases of necessity, to forward said property by any railroad or route between the point of shipment and the point of destination, or the point to which the rate is given; but if such diversion shall be from a rail to a water route, the liability of the carrier shall be the same as though the entire carriage were by rail. (Compare ruling 146.)

(See section 15 of the amended act reserving to shippers the right to route shipments.)

184. PERFORMANCE OF TRANSPORTATION SERVICE WITHOUT RATES ON FILE.—In a recent prosecution instituted by the Commission of a carrier for engaging in transportation of interstate commerce without having previously filed with the Interstate Commerce Commission lawful tariffs applicable thereto, and in which conviction was had and fine of \$12,000 was assessed, the court, speaking through Humphrey, J., said:

It thus appears not only that the performance of interstate transportation by a carrier which has neglected to file and publish its rates and charges is a misdemeanor under the act to regulate commerce and under the Elkins Act, punishable by as severe penalties as any other violation of these acts, but it also appears that the requirement for filing and publication of the rates has been in the act to regulate commerce ever since the passage of the original Cullom bill, and that its importance has been recognized by the Congress by successive amendments designed to make it more precise and its violation more surely and more severely punishable.

The railroad line of the defendant here is entirely situated within the state of Illinois. It is not more than 16 miles in length. It is really no more than a switching road connecting the various railways reaching East St. Louis and Alton, Ill., with each other and with various industries which have been established upon its rails. From the indictment and the plea thereto it appears, however, that this defendant is engaged in the transportation of property moving wholly by railroad from one state to another state. It is, therefore, as much subject to the act as though it owned and operated all the line of railroad connecting the points in different states between which moved the commodities mentioned in the indictment. *C. N. O. & T. P. Ry. v. I. C. Co.*, 162 U. S., 184; *L. & N. R. R. v. Behlmer*, 175 U. S., 648; *U. S. v. C. & N. W. R. Co.* (C. C. A.), 157 Fed. Rep., 321; *Belt Ry. Co. of Chicago v. United States*, 168 Fed. Rep., 542.

These authorities establish that the law regarding publication of rates and charges for interstate transportation applies with equal

force to all carriers engaging in such interstate transportation, whether such carriers operate trains from one state to another state or operate entirely within the boundaries of a single state.

The chief object of the act to regulate commerce is the prevention of discrimination. Carriers, being engaged in a public employment, must serve all members of the public on equal terms. This was the doctrine of the common law. It has been explicitly stated and strengthened by the successive acts to regulate commerce. The requirement of the act that all rates should be published is perhaps the chief feature of the scheme provided for the effective outlawing of all discriminations. If this portion of the act is not strictly enforced, the entire basis of effective regulation will be lost. Secret rates will inevitably become discriminating rates. Whenever discriminating rates or practices are made public, a thousand forces of self-interest and of public policy will be set at work to reduce them to fairness and equality. The failure of any carrier to properly file and publish its rates is quite as serious a violation of the act to regulate commerce as a failure to observe such rates after they have been properly filed and published. (*U. S. v. Illinois Terminal R. Co.*, 168 Fed. Rep., 546, 548.)

It is clearly the duty of the Commission to strictly enforce the provision of the law referred to, and it may confidently be expected that that duty will be performed. (See ruling 194.)

185. FREE OR REDUCED RATE TRANSPORTATION TO MUSEUM OF NATURAL HISTORY.—A museum of natural history, erected in a public park by private subscription and supported partly by taxes and partly by the income of funds contributed by citizens, may be given free or reduced rate transportation under section 22 of the act on articles intended for exhibition therein, notwithstanding the fact that as a means of securing additional income it charges an admission fee on certain days of the week, admission being free on other days. (See ruling 245.)

June 8, 1909.

186. LIABILITY FOR MISROUTING.—(Canceled by ruling 474c.)

187. INTERPRETATION OF CONFERENCE RULING NO. 3.—(Restated in ruling 314.)

June 14, 1909.

188. RATES BASED ON DECLARED VALUATION.—The agent of a shipper not knowing the value of a dog to be sent by express, nevertheless named a valuation of \$500, and the resulting charges to destination amounted to \$45. The dog was actually worth \$15, and at this valuation the express charges would have been \$8.

The consignee declined to accept delivery and pay the charges demanded. Upon inquiry whether charges may be collected on the basis of the actual value of the dog, it was *Held*, That the shipper is responsible for the act of his agent and that the charges at the valuation given must be collected. (Compare rulings 58 and 295.)

189. RETURN OF CARETAKERS.—A shipment of live stock moved between two points over two connecting lines. Upon inquiry by the delivering road, which had a through direct line between the two points, it was *Held*, That it can not free of charge return the caretakers over its own direct line through to the point of origin of the shipment.

190. IN THE ABSENCE OF INSTRUCTIONS INITIAL CARRIER NOT REQUIRED TO ROUTE VIA RAIL AND WATER.—Rule 70 of Tariff Circular No. 15-A (*Conference Ruling 214*) contemplates that where rail-and-water and all-rail rates are available for a shipment the shipper shall designate which class of routing he desires and that the agent of the carrier shall secure such designation from the shipper.

A shipment was delivered to a rail carrier destined to a point to which it might be forwarded via either all-rail or rail-lake-and-rail route. No class of route was designated by the shipper. Shipment was forwarded all rail: *Held*, That taking into consideration the liabilities of carriers and the question of marine insurance upon water-borne traffic, the carrier's agent did not negligently misroute this shipment. (Interpreted in ruling 316. See *Keeton v. St. L. S. W. Ry. Co. of Texas*, 39 I. C. C., 221.)

191. CAR-SERVICE CHARGES ON TRAFFIC FROM AND TO CANADA.—With respect to traffic between points in Canada and points in the United States, the Commission does not waive the requirement that carriers shall file tariffs showing their terminal charges and that such charges must either appear specifically in the tariffs naming the rates or the tariffs establishing such charges must be specifically referred to in the tariffs naming the rates.

192. INTERPRETATION OF AMENDED RULE 70 OF TARIFF CIRCULAR 15-A.—(Canceled by ruling 474.)

193. FREE TRANSPORTATION OF REMAINS OF DECEASED EMPLOYEE AND FAMILY ACCOMPANYING SAME.—It is the view of the Commission that the spirit and meaning of the law with relation to free passes for employees and their families will not be violated if, in the case of the death of an employee

while in the service of a carrier, free transportation be given to his remains and to members of his family who might lawfully use free transportation, if he were still alive, to the place of interment and return to their homes. (See rulings 18, 103, 173, and 476.)

NOTE.—By the amendatory act of June 18, 1910, provision is made for free transportation to widows and orphans of deceased employees, the former during widowhood and the latter during minority.

194. REFUND DENIED OF DEMURRAGE COLLECTED UNDER TARIFF NOT ON FILE.—The Commission will not entertain with favor claims for refund of demurrage charges, collected in accordance with a carrier's established practice, solely upon the ground that the demurrage tariffs were not on file with the Commission at the time the demurrage charges accrued. The failure to file demurrage tariffs constitutes a violation of the act, with which the Commission will deal through the Division of Prosecutions. (See ruling 184.)

195. APPLICATION OF COMBINATION RATES ON FREIGHT MOVING THROUGH ANOTHER JUNCTION.—The conference ruling of June 14, 1909, under this caption was rescinded on November 24, 1909. Amended Rule 5, Tariff Circular No. 18-A, covers and governs the subject.

196. INTERCHANGE OF FREE TRANSPORTATION FOR EMPLOYEES OF WATER LINES.—When a common carrier by water, other than an ocean carrier not subject to the act, unites with a carrier by rail for the interstate transportation of passengers, partly by water and partly by rail, under a common control, management, or arrangement for a continuous carriage shown by concurrence in tariff or tariffs duly published and filed with the Commission, such carriers can lawfully interchange transportation for their officers, agents, and employees. (Reaffirming ruling 95*g*. Modified by ruling 475.)

June 21, 1909.

197. CARRIERS SUBJECT TO THE ACT.—A railroad not otherwise subject to the act subjects itself to the jurisdiction of the Commission and the provisions of the act if it transports express matter for an express company that is subject to the act. (See rulings 368 and 418.)

June 22, 1909.

198. INTERPRETATION OF RULE 70, TARIFF CIRCULAR NO. 15-A (Ruling 214 of this bulletin).—Under this rule any carrier, whether it be the initial or a connecting line, that misroutes a shipment, thereby causing additional transportation charges, may, upon admitting its error, pay the damages arising therefrom, provided the whole burden is borne by it without participation therein by its connections. But the admission must be in good faith with respect to the particular case of misrouting; the Commission will not recognize the validity of any general agreement between two or more carriers by which one assumes responsibility for misrouting in all cases.

199. RESPONSIBILITY FOR MISROUTING.—When a shipper has given routing instructions which a carrier fails to transmit to its connection, the carrier so failing shall be responsible for all additional transportation charges resulting from a misrouting of the shipment. (Amended by ruling 286*c*. See ruling 137.)

200. REPARATION CLAIMS ON THE INFORMAL DOCKET.—(a) At a recent conference between the Commission and representatives of a number of carriers the embarrassments arising through the tying up of rate schedules under the one-year clause customarily inserted in informal reparation orders were fully considered, and the discussion that then took place as well as our subsequent reflections upon the matter, have led us to the conclusion that some modifications of our practice in that regard may be made in certain cases to advantage and without impairing the effectiveness of the law. We have therefore agreed upon the following rules which we think will afford some relief in the premises: (See rulings 14, 130, and 396.)

1. In cases where the through rate in effect at the time of the shipment was in excess of the sum of the local rates the order, instead of requiring the maintenance of an absolute rate for one year from the date of the filing of the application, shall require the absolute rate to be maintained for a period of only six months from the date upon which the reduced through rate equaling the sum of the locals became effective; this rule shall apply, however, only in cases where the local rates in question are to and from some well-recognized and established basing point or line, such as the Mississippi, Missouri, and Ohio Rivers, Chicago, Minnesota Transfer, Buffalo, etc. In all other cases the present practice shall be enforced. (Modified by ruling 425.)

2. Where there is a natural geographical relation between the point involved and other points, which relation the carrier has theretofore expressed in its tariffs by grouping that point with the other points, either with respect to rates on the commodity in question, or with respect to rates on other commodities, or with respect to class rates, the order may require the maintenance of the group relation for one year from the date of the application instead of requiring an absolute rate to or from the point in question.

3. Where the rates on a product of a raw material have had a definite relation to the rates on the raw material, and that relation has been temporarily disturbed and subsequently restored, the order may control the relation for one year instead of fixing an absolute rate on the product.

4. Where a carrier is compelled to charge a higher rate than was intended because of an error in printing a tariff, the one-year clause may be omitted only where the error is specifically called to the attention of the Commission within ninety days after the tariff containing the error has been filed.

(b) Because of the uncertain condition of the tariffs of carriers the Commission has been rather liberal in the past in the conduct of its special reparation docket and proposes, in order to help carriers dispose of claims that have accumulated in the past, to continue this policy for the present. It is manifest, however, that the time is approaching when in the general interest of all concerned the Commission must adopt a different attitude. We take occasion therefore now to say that the Commission will cooperate with carriers, so far as that may legally be possible, in the effort to get all old claims disposed of, and, with respect to shipments made prior to September 1 next, will pursue its present policy of liberality. But with respect to shipments moving on and after that date the Commission will draw the lines much more closely, and will adopt such measures as will materially narrow the scope of its activities in that connection. We are not prepared at this time to define in detail what our policy in the future will be. It may be well, however, now to say that after that date we shall not award reparation, either on the formal or the special docket, in any case where the carrier in question has reduced a rate simply in order to meet the lower rate of a competitor. Any other course of action not only deprives the competitor of the natural benefit of its lower rate, but tends to destroy the inducements for making a lower rate. Moreover, any other course of action is demoralizing in that it enables the carrier, before its own lower rate has become effective, to assure shippers that they may ship by its line notwithstanding its higher rate and afterwards secure reparation on the basis of the lower rate of its competitor. Where there is a difference in rates between two points over different lines,

shippers must understand that they may get the benefit of the lower rate only by sending their merchandise over the line publishing the lower rate. (See ruling 205; also *Noble v. D., T. & I. Ry. Co.*, U. R. Op. A-510; *Trussed Concrete Steel Co. v. E. R. R. Co.*, U. R. Op. A-512 and A-513; *Athens Pottery Co. v. T. & N. O. R. R. Co.*, U. R. Op. A-796; *Isbell & Co. v. L. S. & M. S. Ry. Co.*, 19 I. C. C., 450; *Georgia-Carolina Brick Co. v. S. Ry. Co.*, 20 I. C. C., 149; *Railroad Commissioners of Montana v. N. P. Ry. Co.*, 26 I. C. C., 482; and *Puyallup & Sumner Fruit Growers' Asso. v. N. P. Ry. Co.*, 38 I. C. C., 702.)

(c) It may be well also to announce that it has been suggested that when reparation is granted to a complainant, either in a formal or an informal proceeding, on a finding that the rate under which his shipment moved was excessive and therefore unlawful, the spirit of the law requires that the order ought also to compel the carrier to make a refund on the same basis on all other shipments, moving after the date of the filing of any such complaint, under the rate thus condemned. While no conclusion has been reached there is force in this view and it will have further consideration. (See ruling 220*d*.)

(d) The suggestions that have come to us from various quarters in relation to the conduct of the special reparation docket indicate that some misapprehension exists as to the purpose of that docket, and as to the authority of the Commission in dealing with such cases. It may be well, therefore, to say that our action in special reparation cases has no authority in law except the authority upon which we take similar action in formal cases. In all cases, whether on the formal or the special docket, the law in section 15 specifically requires a complaint and answer and a full hearing; and in section 14 it is provided that where damages are awarded the report of the Commission shall include the findings of fact on which the award is made. We have endeavored to simplify the procedure on the special docket by accepting the application of the carrier as the equivalent of a complaint and answer, and by accepting its admission that the rate charged under the circumstances then existing was unreasonable as a sufficient compliance with the requirements of section 15 for a full hearing. The informality in the pleadings in such cases seems to have led some carriers as well as shippers into the error of supposing that special reparation cases can be disposed of still more informally. This, however, is a mistaken view of our authority. The special docket is not an informal docket in any sense except in respect to the form of the pleadings and the character of the hearing. Our orders in such cases must be regarded as formal orders as fully in all respects as our orders in formal cases. The Commission can exercise no authority on the informal docket that it can not exercise on the formal

docket, nor may it omit any requirement with respect to cases on the special docket that the law imposes upon us in the disposition of cases on the formal docket. (See rulings 14 and 220.)

June 23, 1909.

201. JOINT THROUGH RATES TO AND FROM PORTO RICAN PORTS.—Without at this time deciding whether Porto Rico is to be regarded as a territory of the United States as that phrase is used in section 1 of the act, the Commission will recognize the validity of joint through rates from or to points in the United States to or from a port or ports in Porto Rico when properly concurred in by the water carriers. (See rulings 66, 155, 354, 401, and 422.)

June 24, 1909.

202. DISTANCE TARIFFS TO SHOW DISTANCE BETWEEN STATIONS.—Where rates are stated in a tariff at so much per mile, or according to distance, that tariff, or some tariff specifically referred to therein, must show the distances between the stations between which such rates are to be applied. For the present the Commission will not apply this rule to ordinary mileage tickets or books for passenger travel.

June 29, 1909.

203. SUBSTITUTION OF TONNAGE IN TRANSIT.—(Cancels ruling 85. Ruling 203 withdrawn February 10, 1913; see *The Transit Case*, 24 I. C. C., 344, and 26 I. C. C., 210.)

204. TRANSIT PRIVILEGES.—It is the sense of the Commission that no transit privilege should extend beyond one year. (Qualified by ruling 232.)

205. LIABILITY FOR MISROUTING.—An initial carrier misrouted a shipment, resulting in additional transportation charges, for which it admitted its responsibility and made settlement in accordance with Rule 70 of Tariff Circular No. 15-A (Ruling 214 of this bulletin). Subsequently the connecting line over which the shipment moved became a party to a tariff naming the same rate that applied at the time of the movement over another route. Thereupon the initial carrier and the connecting line requested permission to divide the misrouting overcharge: *Held*, That the petition must be denied on the ground that such a course would amount to the retroactive application of a published rate. (See rulings 200*b* and 220*h*.)

July 2, 1909.

206. PROCEDURE IN FORMAL CASES.—(See current Rules of Practice.)

September 15, 1906.

207. PAYMENT FOR TRANSPORTATION.—Nothing but money can be lawfully received or accepted in payment for transportation subject to the act, whether of passengers or property, or for any service in connection therewith, it being the opinion of the Commission that the prohibition against charging or collecting a greater or less or different compensation than the established rates or fares in effect at the time, precludes the acceptance of services, property, or other payment in lieu of the amount of money specified in the published schedules. (See *In the Matter of Transportation of Company Material*, 22 I. C. C., 439; *C. I. & L. Ry. Co. v. U. S.*, 219 U. S., 486; *L. & N. R. R. v. Mottley*, 219 U. S., 467; and *N. Y. Central R. R. v. Gray*, 239 U. S., 583.)

October 12, 1906.

208. FREE PASSES AND FREE TRANSPORTATION.—(a) The provisions of the act relative to the issuance of free tickets, free passes, free transportation, or free carriage to employees of carriers apply only to persons who are actually in the service of the carriers and who devote substantially all of their time to the work or business of such carriers. Land and immigration agents unless they are bona fide and actual employees, representatives of correspondence schools, agents of accident or life insurance companies, agents of oil or lubricating companies, etc., are not within the classes to which free or reduced-fare transportation can be lawfully furnished. (See rulings 95, 308, 412, 449, 454, and 466.)

(b) But the Commission does not construe the law as preventing a carrier from giving necessary free transportation to a person traveling over its line solely for the purpose of attending to the business of or performing a duty imposed upon the carrier, nor from giving free carriage over its line to the household and personal effects of an employee who is required to remove from one place to another at the instance of or in the interest of the carrier by which he is employed. (See rulings 109, 134, 255, 361, 478, and 479.)

(c) Nor does the Commission construe the law as preventing a carrier from giving free or reduced-rate carriage over its line to contractors for material, supplies, and men for use in construction, improvement, or renewal work on the line of that carrier, provided such arrangements for free or reduced-rate carriage are made a part of the specifications upon which the contract is based and of the con-

tract itself. (See rulings 386 and 413; also *Railroad-Telegraph Contracts*, 12 I. C. C., 11.)

(d) The provisions of the act relative to the issuance of free or reduced-fare transportation to ministers of religion do not apply to or include members of the families of ministers of religion. Neither do the provisions of the act relative to the issuance of free or reduced-fare transportation admit of including therein officers of the Government, the army, or the navy, or members of their families, or other persons to whom such considerations may have been extended in the past, unless they are within the classes specifically named in the act.

Reduced rate or fare transportation may be granted to such persons as are specified in the law as those to whom free transportation may be given. (See ruling 95.)

(e) Section 22 of the act authorizes carriers to grant free or reduced-rate transportation of property for the United States, state, or municipal governments, or for charitable purposes or for exhibition at fairs or expositions. It also authorizes free or reduced-fare transportation of certain specified persons. This special provision and the words "reduced rates" are construed to be special authority for carriers to depart from established tariff rates or fares; and for such transportation as is provided for in said section 22 it is not necessary for carriers to provide tariffs or observe tariff rates or fares and regulations excepting in the issuance, sale, and use of mileage, excursion, or commutation passenger tickets, and joint interchangeable mileage tickets. As to these, the provisions of section 6 with regard to publishing, filing, posting, and observing tariffs must be complied with. (See rulings 33, 36, 65, 218, 244, 297, and 311; compare ruling 107.)

November 16, 1906.

209. DIVISION OF JOINT RATES OR FARES—CONTRACTS AND AGREEMENTS FOR, MUST BE FILED.—A contract, agreement, or arrangement between common carriers, governing the division between them of joint rates or fares on interstate business, is a contract, agreement, or arrangement in relation to traffic within the meaning of section 6 of the act to regulate commerce, and a copy thereof must be filed with the Commission. Where such contract, agreement, or arrangement is verbal, or is contained in correspondence between the parties, or rests on their custom and practice, a memorandum of its terms must be filed with the Commission.

When the agreement or arrangement under which divisions are made is in the form of a contract or formal agreement or recorded memorandum, a copy of each such contract, agreement, or memorandum is to be filed with the Commission. Where such arrangement is made by correspondence or verbally, a concise memorandum of the

basis and general terms and application of the arrangement or practice is to be filed with the Commission. The filing of the division sheets themselves is not desired. (See rulings 269 and 372; amended by order in *Division of Joint Rates on Railway Fuel Coal*, 37 I. C. C., 265.)

210. CORRESPONDENCE WITH COMMISSION ON FREIGHT AND PASSENGER MATTERS.—It is believed that the best results and understandings will be reached if the conducting of ordinary correspondence between carriers and the Commission is confined to as few persons as possible. Request is therefore made that the traffic manager or the general passenger and general freight agents of each road designate not more than two officials or other representatives to respectively conduct the correspondence with the Commission on freight and passenger matters, and to promptly advise the Commission of such appointments.

211. DISTRIBUTION OF OFFICIAL CIRCULARS AND RULINGS.—It is obviously impracticable for the Commission to place copies of its official circulars and rulings in the hands of all the officers of carriers or to furnish copies for distribution among them. The officers at the head of traffic departments, or in charge of the passenger and freight departments, respectively, will please designate for each road one official in the passenger department and one in the freight department (unless both are under one head officer and one appointment is considered sufficient), to whom such circulars and rulings are to be sent; and arrange for such designated officials to disseminate the information among other interested officers and agents. Please report these appointments to the Commission as early as possible.

With the view of giving prompt information to those who may be interested, the Commission will upon application place upon its mailing list regularly organized boards of trade, chambers of commerce, commercial clubs, and shippers' associations, for the purpose of mailing to them copies of official circulars containing rulings and orders of the Commission.

January 21, 1907.

212. TRANSPORTATION OF NEWSPAPER EMPLOYEES ON SPECIAL NEWSPAPER TRAINS.—In *Transportation of Newspaper Employees*, 12 I. C. C. 15, on the petition of certain newspapers in New York City, the Commission decided that a commodity rate may not be applied to the transportation of passengers or a passenger fare to the transportation of a commodity, and that therefore employees of the newspapers, riding on special newspaper

trains, can not lawfully be transported under a commodity rate established for the carriage of newspapers or at any rate other than the one specified in the regularly published schedule of passenger fares.

March 4, 1907.

213. DIVERTING TRAFFIC BECAUSE OF BLOCKADES.—(a) Whenever, by reason of blockade upon the line of a carrier resulting from storm, washout, wreck, or similar casualty, it becomes necessary for it to divert to the line of another carrier passengers or freight that are in transit, the carrier so diverting its business should pay the carrier or carriers, upon whose train such passengers or freight are carried, regular tariff rates or fares from and to the points between which it or they transport such diverted traffic, except that if the carrier accepting such diverted traffic is participant in a joint tariff in which the diverting line is also a participant and under which the diverted traffic is being moved, settlement may be made on basis of the division of the through joint rate or fare. (See rulings 83, 138, 146, 147, and 183.)

(b) If, because of such blockade, a carrier's train is detoured over the line of another carrier, or special train is arranged for movement of the interrupted traffic, the tariff rates or fare, if there be any for such movement, must be applied. In the absence of such tariff regulations compensation should be agreed upon. (See ruling 138.)

This rule does not apply in cases of congested lines due to heavy traffic or ordinary causes. (See *Woodward & Dickerson v. L. & N. R. R. Co.*, 15 I. C. C., 170.)

March 18, 1907.

214. ROUTING AND MISROUTING FREIGHT.—(a) Alleged neglects or errors on part of agents of carriers in misrouting shipments lead to numerous claims of overcharge, many of which are meritorious. The lawful charge on any shipment is the tariff rate via the route over which the shipment moves. No carrier can lawfully refund any part of the lawful charge except under authority so to do from the Commission or from a court of competent jurisdiction. (See ruling 286a.) That thorough understanding and uniform practice may be had in this connection, the Commission issues the following administrative ruling:

(b) In order to secure desired delivery to industries, plants, or warehouses and avoid unnecessary terminal or switching charges, the shipper may direct as to terminal routing or delivery of shipments which are to go beyond the lines of the initial carrier; and his instructions as to such terminal delivery must be observed in routing and billing such shipments. The carriers may not disregard the instructions of shippers as to intermediate routing, except when tariff of

initial line reserves the right to carrier to dictate intermediate routing. When such reservation is made in tariff, (1) where all-rail rates and rail-and-water rates are available the agent of carrier must have the shipper designate which of the two he wishes to use; and (2) the agent must not route shipment via a route that will be more expensive to the shipper than the one desired by him, or that does not furnish substantially as good and expeditious service. If carrier is not willing to observe the intermediate routing instructions of shipper it must not execute bill of lading containing such routing. Carriers will be held responsible for routing shown in bill of lading. (See rulings 190, 284, and 316. Amended by ruling 321.)

(c) In the absence of specific through routing by shipper, which carrier is willing to observe, it is the duty of the agent of the carrier to route shipment via the cheapest reasonable route known to him of the class designated by the shipper—that is, all-rail, or rail-and-water—and via which he has rates which he can lawfully use. If a foreign car is available which under rules as to car service must be sent via a particular line or route over which a higher rate obtains, agent must explain to shipper that fact and allow shipper to elect whether he will use that car at the higher rate or wait for another car. If shipper elects to use the car at the higher rate, agent should so note on bill of lading. If agent is in doubt, he should secure information from proper officers of traffic department. It is important that agents at initial points be able to, and that they do, quote correct rates and give correct routings. (See rulings 91, 140, 190, 284, 316; also *United Kansas Portland Cement Co. v. M. P. Ry. Co.*, U. R. Op. A-321; *Lord & Bushnell Co. v. M. C. R. R. Co.*, 22 I. C. C., 463; *Meeds Lumber Co. v. A. & V. Ry. Co.*, 38 I. C. C., 679; *Donahue-Stratton Co. v. C. M. & St. P. Ry. Co.*, 38 I. C. C., 739; and *Chatanooga Implement & Mfg. Co. v. L. & N. R. R. Co.*, 40 I. C. C., 146.)

(d) If a carrier's agent misroutes a shipment and thus causes extra expense to the shipper over and above the lawful charges via another available route of the class designated by shipper—that is, all rail or rail and water—over which such agent had applicable rates which he could lawfully use, and responsibility for agent's error is admitted by the carrier, such carrier may, as to shipments moving subsequent to March 18, 1907, adjust the overcharge so caused by refunding to shipper the difference between the lawful charges via the route over which shipment moves and what would have been the lawful charges on same shipment at the same time via the cheaper available route of the class designated which could have been lawfully used. Such refund must in no case exceed the actual difference between the lawful charges via the different routes as specified, and must in every instance be paid in full by the carrier whose agent caused such overcharge and must not be shared in by or divided with any other car-

rier, corporation, firm, or person. This authority is limited strictly to the cases specified and to the circumstances recited and does not extend or apply to instances in which soliciting or commercial agents of carriers induce shippers to route shipments over a particular line via which a higher rate obtains than is effective via some other line. (See rulings 93 and 286; also *Duluth & Iron Range R. R. Co. v. C., St. P., M. & O. Ry. Co.*, 18 I. C. C., 485.)

(e) The rule is intended to apply to cases in which the agents who bill or actually forward or divert shipments through error or oversight send the shipments via routes that are more expensive than those directed by shippers or available in the absence of routing instructions by shippers. It must not be used in any case or in any way to "meet" or "protect" a rate via another route or gateway via which the adjusting carrier has not in its tariffs at the time the shipment moves rates which are available and lawfully applicable thereto, nor as a means or device by which to evade tariff rates or to meet the rate of a competing line or route, nor to relieve shipper from responsibility for his own routing instructions.

November 15, 1907.

(f) The prerequisites to any refund under this rule are admission by carrier of responsibility for its agent's error in misrouting the shipment, and such carrier's willingness to bear the extra expense so caused, without recourse upon any other carrier for any part thereof. If, therefore, the error is discovered before the shipment has been delivered to consignee or before charges demanded upon same have been paid, the carrier acknowledging responsibility for the error may authorize the delivering carrier to deliver shipment upon payment of the charges that would have applied but for the misrouting and to bill upon it for the extra charge; or, if the shipment has been delivered undercharged before the error is discovered, the carrier that acknowledges responsibility for the error may pay the undercharge to the carrier that delivered the shipment instead of requiring it to collect the undercharge from shipper, to be refunded to shipper. (Interpreted by ruling 198.)

Complete distinction must be observed between cases to which this rule applies and those provided for under ruling 217.

(g) Shippers must bear in mind that there is a limit beyond which an agent of a carrier could not reasonably be expected to know as to terminal delivery or local rates at distant points and on lines of distant roads to or with which he has no specific joint through rates. Consignors and consignees should cooperate with agents of carriers in avoiding misunderstandings and errors in routing and must expect

to bear some responsibility in connection therewith. (See *What Cheer Tool Co. v. K. & M. Ry. Co.*, U. R. Op. 2159, and *Isbell & Co. v. L. S. & M. S. Ry. Co.*, 19 I. C. C., 450.)

March 9, 1909.

(h) If, under this rule, a carrier adjusts a claim for misrouting and later learns that the responsibility for misrouting actually rests upon another carrier, such other carrier may voluntarily reimburse the carrier that made the payment in the full amount of such payment, or the matter may, if necessary, be referred to the Commission for determination of the question of which carrier is responsible for the error.

April 6, 1909.

(i) Restated in ruling 474c.

March 18, 1907.

215. COMBINATION OF JOINT RATE OR FARE TO COMMON POINTS AND LOCAL RATE OR FARE BEYOND.—

(a) In order to secure uniformity in practice and understandings and to remove the cause of many complaints, the Commission decides that when a joint through rate or fare is the same to two or more points and rate or fare on through shipment or passenger to local station to which no specific joint through rate or fare applies is made up by combination of such joint through rate or fare to common points and local rate or fare beyond, the rate or fare for through shipment or passenger must be determined by calculating the joint through rate or fare to the point from which the lower local rate or fare applies to point of destination and adding thereto such local rate or fare. For example: Joint through tariff names the same rates or fares from certain eastern points to Chicago and Milwaukee. If shipment or passenger is destined to a point to which the local rate or fare is less from Milwaukee than from Chicago, the rate or fare applied should be the joint through rate or fare to Milwaukee plus the local rate or fare from Milwaukee to destination, and unless the lines of delivering carrier reach both Chicago and Milwaukee the shipment or passenger should move via Milwaukee. If the local rate or fare from Chicago to point of destination is lower than from Milwaukee, the rate or fare should be the joint through rate or fare to Chicago plus the local rate or fare from Chicago to destination, and unless the lines of delivering carrier reach both Milwaukee and Chicago the shipment or passenger should move via Chicago. (See *Larrowe Milling Co. v. C. & N. W. Ry. Co.*, 17 I. C. C., 443 and 548; also *Rehberg & Co. v. Erie R. R. Co.*, 17 I. C. C., 508.)

(b) Rates or fares for outbound through movements from such local stations and under like circumstances must be applied on the same basis where the joint through rates or fares are the same from two or more points.

(c) This does not authorize any carrier to apply to transportation over its lines any rate or fare except those stated in its own lawfully published tariffs or in the lawfully published joint tariffs in which it has concurred. If a carrier desires to "meet the rate" of a competitor, it must do so by lawfully including in its own tariffs such specific rates or fares, proportional or otherwise, as may be necessary so to do. (See rulings 195 and 214.)

(d) It is suggested that shippers can assist in avoiding mistakes and misunderstandings by calling attention to the rate that should apply in such cases as come under this rule by indicating it on shipping bill in connection with routing instructions; for instance, "Rate on Milwaukee." This is, however, merely a suggestion, and does not relieve the agents of carriers from the responsibility of quoting and applying the correct lawful rate.

(e) This rule does not apply where a shipment has reached its destination as originally given by shipper and has been reconsigned, except when tariff contains reconsigning rule that provides for such application.

(f) This rule must not apply in any case where there is an applicable specific joint through rate or fare from point of origin to point of destination. (See Rule 55, Tariff Circular 18-A.)

March 25, 1907.

216. FREE TRANSPORTATION OF OFFICERS OR EMPLOYEES OF OMNIBUS OR BAGGAGE EXPRESS COMPANIES.—In its decision on the petition of the Frank Parmelee Company (*Exchange of Free Transportation*, 12 I. C. C. 39) the Commission held that a carrier subject to the act can not lawfully give free transportation to officers, agents, or employees of an omnibus or baggage express company, except, as authorized in the act, for baggage agents who meet passenger trains at some point near the larger cities and go through the trains to arrange for transfer of passengers and their baggage. (See ruling 95a, par. 3, and 95g.)

May 6, 1907.

217. RETURN OF ASTRAY SHIPMENTS.—Instances occur in which, through error or oversight on the part of some agent or employee, a shipment is billed to an erroneous destination or is unloaded short of destination or is carried by. The Commission is of the opinion that in bona fide instances of this kind carriers may

return such astray shipments to their proper destination or course without the assessment of additional charges, and may arrange for such movement of such astray shipments for each other on mutually acceptable terms without the necessity of publishing, posting, and filing tariff under which it will be done. (See rulings 31 and 240.)

Complete distinction must be observed between cases to which this rule applies and those provided for under *Conference Ruling 214*.

May 27, 1907.

218. TRANSPORTATION OF FEDERAL TROOPS.—The Commission is of the opinion that carriers, either by contract or bid or other arrangement with the War Department, may lawfully make special rates or fares for the movement of federal troops, when moved under orders and at the expense of the United States government, and that the rates or fares so made need not be posted or filed with the Commission. (See rulings 33 and 208e.)

The lawfully published rates or fares for the transportation of the general public, in the opinion of the Commission, are to be regarded, however, as the maximum rates and fares that may lawfully be charged the government for the movement of federal troops. (See *United States v. A. & V. Ry. Co.*, 40 I. C. C., 406.)

This ruling also governs similar transportation for the naval and marine services. (Ruling does not apply to state or territorial troops; see ruling 297.)

June 3, 1907.

219. TRANSPORTATION OF MEN OR PROPERTY FOR TELEGRAPH COMPANIES.—(a) In its decision on the petition of the Western Union and Postal Telegraph companies, in *Railroad-Telegraph Contracts*, 12 I. C. C. 10, the Commission held it would be unlawful for a carrier subject to the act to contract or stipulate with a telegraph company for the carriage of its officials, employees, or property for any greater or less or different compensation than that specified in the regularly published tariffs in effect at the time, except in connection with the construction, operation, and maintenance of telegraph line and service on its own line. It was held that a group of separately incorporated roads, recognized as a "railway system," may be considered as one in the making of contracts for telegraph service on that system. (Modified by ruling 491. See also rulings 95a, par. 2, 161, and 364; see also amendatory act of June 18, 1910, interpreted in ruling 305.)

(b) This definitely differentiates between the employees of the telegraph company who are actually engaged in constructing and maintaining a telegraph line along the line of a railway, or in operat-

ing such telegraph line as a part of the actual operation of that railway, and those who are engaged in the commercial business of the telegraph company. The fact that railway officials may, by use of deadhead franks, send messages on railway business from or receive such messages at a commercial office of a telegraph company does not constitute that office a part of the operation of any of the lines of railway which such officials represent nor bring that telegraph office into such relationship with the business of the railways as to warrant treating it as part of the operating facilities of such railways. Practically all telegraphing so done is "off the line" business and is to be considered as commercial business. The same distinction is to be observed in the hauling of materials and supplies for telegraph companies with which the railway company has contract for telegraphic service. (Amended by ruling 491. See also ruling 305.)

November 15, 1907.

(c) This rule applies also to telephone service, and carriers that have not already done so are hereby requested and called upon to promptly file with the Commission copies of all contracts for telegraph or telephone service on their lines. (See ruling 305.)

June 7, 1907.

220. SPECIAL REPARATION ON INFORMAL COMPLAINTS.—(a) To assist in the settlement of certain claims of shippers against carriers, and as a practical means of disposing with promptness of informal complaints that might otherwise develop into formal complaints, and in connection with which the unreasonableness of the rate or regulation is admitted by the interested carrier or carriers, the Commission on full information will authorize adjustment by special order if all of the facts and conditions warrant such action. The connections in which the Commission has authority to modify the provisions of the law are specified in the act. The Commission will not assume to modify it in any other connections or features.

(b) The instances in which the Commission will authorize refund or reparation on informal complaint and in an informal way will be confined to those in which the informal showing develops plainly a case in which the Commission would award reparation on formal hearing and in which an adjustment agreeable to complainant and carrier or carriers and in conformity with the provisions of the law is reached.

(c) (Superseded by ruling 396.)

(d) No carrier may pay any refund from its published tariff charges save with the specific authority of the Commission in accord-

ance with the provisions of the act. When an informal or formal reparation order has been made by the Commission the principle upon which it is based shall be extended to all like shipments, but no refunds shall be made upon such like shipments except upon specific authority from the Commission therefor. (See rulings 49 and 200c; also *Bergerman v. A., T. & S. F. Ry. Co.*, U. R. Op. 2132.)

(e) The shipper should pay the lawfully published charges applicable via the route over which the shipment moves, and make claim for refund if he believes he has been overcharged. The Commission will not ordinarily include in reparation award demurrage charges which accrue pending adjustment or subsequent to consignee's refusal to accept the shipment and pay the lawful charges thereon, but in special cases such demurrage charges may be included in the amount of refund. (See ruling 32.)

(f) It is the duty of the delivering carrier to collect, and of the consignee to pay, demurrage charges as per lawful tariffs. Demurrage charges accruing because of error of a carrier are considered in the same light as are other additional transportation charges caused by carrier's error; and if adjusted, the full expense thereof must be borne by the carrier whose agent is responsible for the error. (See ruling 214; see also note to ruling 242; see Code of National Car Demurrage Rules; also *Middle West Coal Co. v. C. & O. Ry. Co.*, 41 I. C. C., 724.)

(g) The Commission has repeatedly announced the view that the law does not permit the use of any rate or fare except that contained in a lawful tariff that is applicable via the line, route, and gateway over and through which the shipment or passenger moves. The lawful rate or fare for through movement is the through rate or fare, wherever such through rate or fare exists, even though some combination makes a lower rate or fare and even though the practice in the past has been to give to some the benefit of such lower combination. The Commission long since extended to carriers, in a general order, permission to reduce, on one day's notice, a joint commodity or class rate or fare that is higher than the sum of the intermediate rates between the same points to make it equal the sum of such intermediates. If, therefore, carriers have maintained through rates or fares that are higher than the sums of the intermediates between the same points, it is because of their desire so to do, and not, as some agents of carriers have informed shippers, because the law or the Commission forces them to do so. (See Rule 56, Tariff Circular 17-A or 18-A; also ruling 443.)

(h) If a carrier desires to give its patrons the benefit of the same rate or fare that applies via another line or gateway, and which is lower than its own rate or fare, it can do so by lawfully incorporating that rate or fare in its own tariffs, and so give the benefit of it to all

of its patrons alike. The law forbids giving such lower rate or fare to one and withholding it from another, but neither the law nor the Commission stands in the way of adoption in lawful manner of the lower rate or fare as available for all. (See ruling 205.)

(i) The Commission's power to authorize adjustments will not be exercised in such way as to create the very discriminations which the law aims to prevent. No doubt instances will occur in which seeming hardship will come to some. Much of such embarrassment will be avoided if agents of carriers and shippers take pains to be certain that correct rates are quoted and correct routing is given.

(j) Claims filed since August 28, 1907, must have accrued within two years immediately prior to the date upon which they are filed; otherwise they are barred by the statute. Claims filed with the Commission on or before August 28, 1907, are not affected by the two years' limitation in the act. The Commission will not take jurisdiction of or recognize its jurisdiction over any claim for reparation or damages which is barred by the statute of limitation, as herein interpreted, and the Commission will not recognize the right of a carrier to waive the limitation provisions of the statute. (See rulings 10, 306, and 307.)

July 8, 1907.

221. REFUNDS AND COMMISSIONS.—(a) The act prohibits a carrier from demanding, collecting, or receiving a greater or less or different compensation for transportation than that named in its tariffs in effect at the time. It prohibits the rebating or refunding to any person in any manner, or by any device whatsoever, any part of the lawful charges so collected. It is therefore manifestly unlawful for a carrier to refund to any association, committee, or person, any part of the charges collected by the carrier as a condition of the sale of transportation. A carrier's agents may, as a matter of convenience, sell admission tickets to entertainments in connection with which excursion-fare tickets are sold, but the purchase of such admission ticket must not be made a condition of the sale of transportation ticket. (See ruling 7.)

March 1, 1908.

(b) The act does not prohibit a carrier from providing in its own interest and as a means of stimulating travel over its line an entertainment at a point on its line; nor from contributing to the expense of such an entertainment if such contribution be made in a definite sum and be in no way dependent or contingent upon the number of tickets sold, and provided that no part of such contribution be by any device or through any person whatsoever permitted to effect any departure from or discrimination under the carrier's tariff fares.

May 12, 1908.

(c) The ruling of the Commission on this date, published in *Conference Rulings Bulletin No. 4*, was amended on February 14, 1911, to read as follows:

A carrier may employ an agent to act for it in working up passenger excursions and make his compensation depend upon the results of his efforts by executing a contract in the following form and filing a copy with the Commission, together with reference by I. C. C. number to the tariff which contains the fares. Any person so appointed becomes in fact the agent of the appointing carrier, and such carrier will be, and will be held, responsible and liable for his acts as its agent. If any part of the compensation paid by a carrier to such an agent is used or is permitted to be used, either directly or indirectly, in such way as to reduce for any person the lawful tariff charges of any carrier subject to the act to regulate commerce, the agent or agents and the carrier or carriers causing or permitting such departure from the lawful tariff charges will be held to full responsibility and liability therefor:

The ——— rail ——— company, having arranged to run an excursion from ——— to ——— and return, on ———, to be known as the ——— excursion, at the following fares: Adults, ———; children, ———, hereby appoints ———, residing at ———, its agent to solicit and develop business for said excursion and accepts responsibility and liability for the acts of said agent. The said ——— hereby agrees to devote to this work such portion of his time from ——— to ——— as may be necessary, in consideration of which the ——— rail ——— company agrees to compensate him as follows: If ——— adult tickets, or their equivalent, are sold ——— cents for each adult and ——— cents for each half ticket so sold.

It is understood and agreed that no compensation will be paid hereunder if less than ——— adult tickets, or their equivalent, are sold.

April 13, 1908.

222. DEMURRAGE ON PRIVATELY OWNED CARS.—The Commission decided in *Demurrage Charges on Privately Owned Tank Cars*, 13 I. C. C., 378, that private cars owned by shippers and hired to carriers upon a mileage basis are subject to demurrage when said cars stand upon the tracks of the carrier either at point of origin or destination of shipment, but are not so subject when upon either the private track of the owner of the car or the private track of the consignee. The carrier must charge demurrage in all cases where such demurrage is imposed by tariff provision upon its own equipment, except when a privately owned car is upon a privately owned siding or track and the carrier is paying or is responsible for no rental or other charge upon such car. (Modified and explained by ruling 79; see important note to ruling 242; see also Rule 75 of Tariff Circular 18-A and rulings 123 and 270 of this bulletin; and Code of National Car Demurrage Rules.)

May 12, 1908.

223. DEMURRAGE ON INTERSTATE SHIPMENT.—(a) The act requires that carriers shall publish, post, and file “all terminal charges * * * which in any wise change, affect, or determine * * * the value of the service rendered to the passenger, shipper, or consignee,” and all such charges become a part of the “rates, fares, and charges” which the carriers are required to demand, collect, and retain. Such terminal charges include demurrage charges.

(b) On March 16, 1908, the Commission decided that demurrage rules and charges applicable to interstate shipments are governed by the act to regulate commerce, and therefore are within its jurisdiction and not within the jurisdiction of state authorities. Any other view would open a wide door for the use of such rules and charges to effect the discriminations which the act prohibits. (Reaffirming ruling 54.)

(c) (Amended and restated by ruling 135.) (See Code of National Car Demurrage Rules.)

224. TRANSPORTATION OF TRUCKS OF CARS DESTROYED ON FOREIGN LINES.—If a car of one company is destroyed on the line of another company and the lines of those two companies directly connect with each other, the carrier upon whose line the car is destroyed may transport free, as its own property, to junction with the line of the carrier owning the car, the trucks of the destroyed car, which are understood to be salvage from a wreck, the cost of which must be borne by the carrier on whose line it occurs. If there is not direct connection between the line of the carrier owning the car and the line upon which it is destroyed, the carrier on whose line the car is destroyed may transport the trucks free to a junction with an intermediate carrier, and pay to the intermediate carrier or carriers their full tariff rates for transporting them to a junction with the line of the carrier owner of the car destroyed, and such owner may transport them on its own line as its own property.

It does not appear to the Commission that opportunity for abuse or discrimination is opened by this practice. It does not appear to transgress the Commission's rule that carriers may not haul freight free for each other; and it is approved with the reservation that if discrimination or unlawful practice is found to grow out of it the plan will be condemned. (See ruling 225.)

November 13, 1908.

225. CARRIERS MAY NOT BE GIVEN PREFERENTIAL RATES.—(a) In answer to inquiries the Commission expresses the opinion that under the law a carrier, or a person or corporation operating a railroad or other transportation line, may not, as a shipper

over the lines of another carrier, be given any preference in the application of tariff rates on interstate shipments, but it may lawfully and properly take advantage of legal tariff joint rates applying to a convenient junction or other point on its own line, provided such shipments are consigned through to such point from point of origin and are, in good faith, sent to such billed destination. In other words, one carrier shipping its fuel, material, or other supplies over the lines of another carrier must pay the legal tariff rates applicable to the same commodities shipped by an individual, but when a carrier is the consignee of a shipment of its own property which moves under a joint rate and is to participate in the haul of same via its own line, routing instructions of consignor to a specified junction point on the line of consignee carrier must be observed. There may be some instances, such as movement of needed fuel, in which, in order to keep the trains or boats moving, such traffic could temporarily be given preference in movement without creating unjust or unwarranted discrimination. (See rulings 153, 224, and 373; also *In the Matter of Restricted Rates*, 20 I. C. C., 427; *Beekman Lumber Co. v. L. Ry. & N. Co.*, 21 I. C. C., 281; *In the Matter of Transportation of Company Material*, 22 I. C. C., 440; *American Brake Shoe & Foundry Co. v. A. G. S. R. R. Co.*, 26 I. C. C., 448; and *Divisions of Joint Rates on Railway Fuel Coal*, 37 I. C. C., 266.)

(b) Where stock in one carrier company is owned by another carrier company, but both maintain separate organizations and report separately to the Commission, they may not lawfully carry property free for each other. (Restating ruling 9. See *I. C. C. v. B. & O. R. R.*, 225 U. S., 326.)

November 9, 1909.

226. SIGNATURE TO RELEASED VALUATION CLAUSES ON BILLS OF LADING.—Rule 6 of the Southern Classification provides that where the tariff offers a reduced rate based on a certain fixed valuation a release, in the form specified in the tariff and containing the agreed valuation, must be written and signed by the shipper on the face of the bill of lading. As applied to a case where the shipper indorsed the released valuation on the bill of lading, but, not knowing the requirements of the rule, omitted to indorse the special form across its face, it was *Held*, That the rule is unreasonable and that it is the carrier's duty to secure the shipper's signature to such a release on the bill of lading when it has reasonable notice of his desire to take advantage of the lower rate upon a released valuation. (Compare ruling 160.)

227. EXCHANGE BILLS OF LADING.—It is the view of the Commission that exchange bills of lading ought to show specifically

the point of origin of the shipment and the route over which it has moved. (See ruling 415.)

228. REDEMPTION OF MILEAGE BOOKS.—The rules governing the sale, use, and redemption of mileage books should be a part of the tariff under which they are sold. If a carrier deems it wise to provide in such rules for the redemption of unused portions of such books on the basis of the mileage rate for the portion used, it will be recognized by the Commission as redemption "at the full tariff rates" within the meaning of *Conference Ruling 76*, of this bulletin, when the books were sold under tariff authority and on the basis of a specific sum per mile.

229. LINE JOINTLY OPERATED THROUGH SEPARATE COMPANY MUST CONCUR IN TARIFFS FOR THROUGH TRAFFIC.—Two carriers desiring a joint operation of their combined lines between two points propose that they shall be operated by a new and separate company which shall handle as its own, and under its own tariffs, all local business between those points, and shall handle all other business under some arrangement with the two lines which does not permit it to participate in the earnings on the through traffic: *Held*, That *Conference Ruling 180*, entitled "Lessee road not serving as common carrier," does not apply and that the road operating between the two points must concur in the through rates over its line.

November 22, 1909.

230. TRANSIT PRIVILEGE—RESPONSIBILITY OF CARRIER FOR MISROUTING.—As the agent of an intermediate carrier has no means of knowing just why a shipment has been routed through particular junctions, he has no right to substitute his own judgment as to routing for the specific routing instructions accompanying the shipment. In a stated case the initial carrier issued bills of lading showing particular routing but no rate; the transfer billing subsequently issued to a connecting line showed the routing and a 10-cent division of a 33-cent rate that did not apply through the junctions named but through another junction; and the agent of the connection therefore diverted the shipment through the latter junction to destination. It subsequently appeared that because of the diversion the shipper had lost a transit right at a given point on the route specified, which was necessary to effect the sale of the shipment at destination: *Held*, That as tariffs are permitted to contain rules providing that they are subject to the transit privileges shown in the tariffs of individual carriers on file with the Commission, the intermediate line was responsible to the shipper for the difference between

the rate paid in order to get the shipment back to the transit point and the legal rate over the route directed by the shipper. (See ruling 214.)

231. CARRIER MUST FIND THE RATE NAMED BY SHIPPER AND ROUTE ACCORDINGLY OR ASK INSTRUCTIONS.—(Canceled by ruling 474c.)

232. CREOSOTING LUMBER—TRANSIT PRIVILEGE OF EIGHTEEN MONTHS NOT EXCESSIVE.—The Commission has expressed the view that a transit privilege extending through a period of more than one year is *prima facie* unreasonable. (Ruling 204.) Experience has shown, however, that as applied to the creosoting of lumber a period of eighteen months is not unreasonably long, provided the full local rates on the inbound material are required to be paid. (See *National Lumber & Creosoting Co. v. T. & S. F. Ry. Co.*, 42 I. C. C., 36.)

233. PARTIAL UNLOADING AT INTERMEDIATE POINT OF SHIPMENTS.—Upon inquiry as to the legality of a practice permitting the stoppage of shipments of perishable commodities at points short of destination to partly unload: *Held*, That the practice is legal only when authorized under proper tariff rules.

234. MISROUTING RESULTING IN WRONG TERMINAL DELIVERY.—(Restated and modified in ruling 509.)

235. DRAYAGE CHARGES.—Certain shipments were delivered at a destination as actually routed by the consignor, but there was a general understanding with the carrier, not covered by tariff provision, that traffic should be diverted at a certain point in order to accommodate consignees located near certain team tracks on the delivering line. The agent having failed to divert the shipments at that point, the consignees were subjected to extra drayage charges: *Held*, That the claim for a refund must be rejected. (See rulings 20 and 234.)

236. CLAIMS MAY NOT LAWFULLY BE PAID UNTIL THEY HAVE BEEN INVESTIGATED.—The Commission adheres to *Conference Ruling 68*, to the effect that it is not a proper practice for railroad companies to adjust claims immediately upon presentation and without investigation. The fact that shippers may give a bond to secure repayment in case, upon subsequent examination, their claims prove to have been improperly adjusted does not justify the practice. Carriers that have adopted that practice will be expected promptly to discontinue it. (See also ruling 462; also *Charleston & Car. R. R. v. Varnville Co.*, 237 U. S., 597.)

November 23, 1909.

237. REFUND ON SHIPMENT FORWARDED TO ERRONEOUS DESTINATION THROUGH CONSIGNOR'S ERROR.—

A car of coal was forwarded to the destination named in the bill of lading, but the carrier, not being able to find the consignee and learning that a company of the same name at a near-by point was tracing a coal shipment, reconsigned it to that point without consulting the consignor, and that subsequently proved to be the correct destination: *Held*, That a refund might be allowed upon showing that the additional transportation expense fell on the consignor.

In this connection the general principle is expressed in the following rule: If a shipper sends a shipment to an erroneous destination he should have the right to guard, so far as possible, against resulting loss by disposing of the shipment at that point. The carrier should not, therefore, forward such shipment to another destination with attendant additional transportation charges without having made reasonable effort to secure disposition instructions from the shipper. (See rulings 248 and 433.)

December 6, 1909.

238. REFUND OF FARE PAID FOR NEW TICKET WHEN LIMITED TICKET ORIGINALLY PURCHASED HAS BEEN LOST OR DESTROYED.—If a limited passenger ticket is lost or destroyed before being used (and no error or neglect of a carrier's agent is involved), it is not unlawful for the carrier, after the limit of the ticket has expired, to refund to the passenger the extra fare paid as a result of such loss or destruction, provided the loss or destruction, the identity of the claimant as the original holder, and the fact that the extra fare was paid for travel by the original holder over the route and within the limit of the lost ticket, are clearly and definitely proved in a form that becomes a part of the record in the case; and provided it is clearly shown that such ticket has not been used or redeemed by any other person. Such action should be withheld for a sufficient period of time properly and reasonably to guard against the lost ticket being redeemed or used by some person other than the original holder. (Compare rulings 76 and 247. See *Waber v. U. & D. R. R. Co.*, U. R. Op. 2204; and *Miller v. A. C. L. R. R. Co.*, 29 I. C. C., 528.)

239. CONFLICTING RATES—LOWEST RATE IS THE LEGAL RATE.—A carrier in reissuing a tariff brought forward certain rates originally named in a previous tariff, and also slightly increased the rates named between the same points on the same commodity in a supplement to the previous tariff: *Held*, That where a tariff contains conflicting rates the lower or lowest of the rates so

published is the legal rate. (Compare rulings 50, 70, 101, and 104. See *Ireland & Rollings v. St. L. & S. F. R. R. Co.*, 22 I. C. C., 592.)

240. SWITCHING MOVEMENT ANALOGOUS TO AN ASTRAY MOVEMENT.—The yardmen of an interstate carrier being under the impression that a loaded car was empty delivered it to a switching road by which it was switched to a loading point, and the error being there discovered it was thence switched back: *Held*, That while the switching line may treat the shipment as analogous to an astray movement and on that account may waive its charges, if it desires to do so, it may nevertheless lawfully demand and collect of the carrier that made the error its lawful rates for the service performed. (See ruling 217.)

241. A CANAL BOAT LINE ENGAGED IN THROUGH MOVEMENTS IN CONNECTION WITH A RAIL LINE IS SUBJECT TO THE ACT AND MUST FILE TARIFFS.—A canal boat line carrying traffic moving from New York City to Canadian points under an arrangement for through movement, the traffic being transferred to a rail line at Buffalo by its own agents or the agents of the railroad, is a common carrier under the act and must file tariffs with the Commission.

242. UNIFORM DEMURRAGE RULES AND PRACTICES.—Recognizing the great benefits to be derived from uniformity of car-service rules, the Commission endorses the code which was reported to the National Association of Railway Commissioners and by that association recommended to the state and interstate commissions, it being understood that this action is, of course, subject to the right of the Commission to inquire into the legality or reasonableness of any rule or rules which may be the subject of complaint, and that announcement to that effect be made with the Code of Demurrage Rules.

In view of the exhaustive investigation upon which the Demurrage Code is based, it is to be understood as controlling in cases where any conference ruling previously made conflicts with any of its provisions. (See ruling 404.)

243. ROUTING INSTRUCTIONS WITH AND WITHOUT NAMING THE RATE.—A shipment was routed through a certain junction by the consignor, but on the papers presented to the Commission it did not clearly appear whether he also named the rate that had been available through that junction but was canceled shortly before the movement. The instructions were complied with by the carrier and the new and higher rate applied: *Held*, That this was a shipper's error and the higher rate must be collected unless he also named in the bill of lading the lower rate legally in effect through another junction, in which case carrier was liable. (See ruling 474.)

December 7, 1909.

244. REDUCED RATES ON PROPERTY FOR THE UNITED STATES OR MUNICIPAL GOVERNMENTS.—Rule 61 of Tariff Circular 17-A and *Conference Ruling 65* are hereby withdrawn and the previous ruling of February 4, 1908, reported as *Conference Ruling 36*, is restored. (See rulings 208e and 311.)

December 13, 1909.

245. FREE TRANSPORTATION OF PERSONS UNDER SECTION 22.—There is nothing in the provisions of section 22 of the act relating to free or reduced rate transportation to warrant carriers in according free transportation to scientists or other employees of a public museum. (See ruling 185.)

246. COMPLAINTS FILED BY TRAFFIC OR CREDIT BUREAUS.—While it is the policy of the Commission to entertain complaints instituted on behalf of shippers by traffic or credit bureaus, in all such cases where reparation is awarded, the order will require payment to be made by the defendant carriers either to the consignor or the consignee, as their interests may appear. (Amended by ruling 362.)

December 14, 1909.

247. PASSENGER TICKET LOST BY CARRIER THROUGH ERROR.—Through error a carrier's agent so punched a round-trip ticket to New York as to limit its use to October 14 instead of October 17. The holder at destination requested a correction, the ticket, being sent back for that purpose by the passenger agent, was lost in the mails. The initial carrier's agent at New York secured from its connection a return ticket in lieu of the lost ticket. It now asks that its connections be authorized to accept report of this ticket without revenue: *Held*, That the initial carrier must pay the cost of the return ticket. (Compare ruling 238; see rulings 113, 167, 266, and 277.)

January 4, 1910.

248. COLLECTION OF ESTABLISHED RATES ON RECALLED SHIPMENT.—A shipment had moved 150 miles from the point of origin before the consignor discovered that an error had been made in filling the consignee's order. On inquiry by telephone he was informed by the carrier's clerk that the car could be returned without extra charge; and thereupon the consignor requested its return for a correction of the loading. A part of the carload was ex-

changed, the shipment was again billed out and moved to destination: *Held*, That the Commission can not relieve the carrier from the obligation of collecting the published rates for all the movements actually made. (See rulings 237 and 433.)

249. OUTBOUND CHARGES ON A SHIPMENT MAY NOT BE REFUNDED BY THE CARRIER AND CHARGED BACK AGAINST THE CONSIGNOR.—A shipment having been accepted by the consignee at destination and removed to his place of business was subsequently returned to the delivering carrier, the outbound charges were refunded and included in the return waybill as advance charges. Upon delivery of the returned shipment to the original consignor the return charges, as well as such advance charges, were demanded and collected: *Held*, That the published rate for the return movement was the only charge that carrier could lawfully exact from the original consignor.

250. DEMURRAGE ON CARLOAD SHIPMENT TRANSFERRED INTO TWO CARS.—(Amended and restated in ruling 357.)

January 10, 1910.

251. NO REPARATION ON BASIS OF RATE NOT FILED.—(Restated in ruling 419.)

252. DESTRUCTION OF DOCUMENTS.—The destruction of canceled tariffs that have been posted at the stations of a carrier as required by law is not regarded by the Commission as an offense under section 20 of the act so long as a copy of the same tariff is preserved by the carrier in its general files. (See general orders of Commission relating to preservation and destruction of records.)

February 7, 1910.

253. MISROUTING THROUGH ERROR OF JOINT AGENT OF TWO CARRIERS.—A shipment originating on one line and not routed by the shipper reached a junction point with another line where a joint agent was maintained. Instead of delivering the shipment to the other line at that point, the joint agent permitted it to go forward on the originating line to another junction point with the second line, over which route the charges were substantially higher than if the second line had taken the shipment at its first junction with the originating carrier: *Held*, That although the agent was a joint agent, he was, with respect to this shipment, acting as agent for the originating carrier, and the cost of his error should be borne by that line alone. (See ruling 286.)

254. NO REFUND ON THE BASIS OF A RATE NOT EFFECTIVE.—Through inadvertence a carrier quoted a northbound rate of 26 cents instead of a southbound rate of 29.5 cents. A sale having been effected on the basis of the rate quoted, application is made for authority to refund on that basis. Within a few months after the date of the movement the southbound rate was reduced to 17 cents: *Held*, That reparation on the basis of the northbound rate must be denied, but that an application for authority to refund on the basis of the subsequently established southbound rate would be entertained.

255. FREE TRANSPORTATION OF HOUSEHOLD GOODS OF EMPLOYEES.—Upon inquiry, *Held*, That a carrier can not lawfully transport free of charge and deliver to a connection the household goods of an employee who has left its service to accept a position with another carrier. (Reaffirming ruling 109; see also ruling 208*b*.)

256. THE LOWEST COMBINATION OF RATES IS THE LAWFUL CHARGE, IN THE ABSENCE OF A JOINT THROUGH RATE, ONLY WHEN BOTH FACTORS ARE FILED WITH THIS COMMISSION.—Upon a movement from a domestic point to a destination in Canada charges were assessed at a combination of rates both factors of which were on file with this Commission, but which made higher than another combination over the same route one factor of which was on file with the Canadian Commission but not with this Commission: *Held*, That the Commission can not award reparation on the latter combination. (See rule 5, Tariff Circular 18-A; also see ruling 262.)

257. COMMISSARY CAR OPERATED BY A CARRIER UNLAWFUL.—A carrier for 25 years has operated a commissary car making two trips monthly with a staple line of meats, groceries, and a restricted stock of shoes, overalls, and other wearing apparel. The sales are limited to employees of the company and their immediate families and are not made for cash, but on tickets signed by the company foreman showing the amount of wages due the holder. The purchases are limited to two-thirds of this amount: *Held*, That the practice is illegal.

Upon a subsequent further consideration of this inquiry it was *Held*, That the operation of such a car is in violation of the commodities clause of the act and also in violation of sections 2 and 3 in that such a practice unjustly discriminates against other persons who pay full tariff rates for the same service.

258. WAIVER OF UNDERCHARGES.—(Rescinded by ruling 472.)

259. FREE TRANSPORTATION FOR RED CROSS SOCIETY.—Upon inquiry it was *Held*, That interstate carriers would not be in violation either of section 1 or section 22 in according free transportation to a car occupied by the American National Red Cross Society and its attendants when traveling for the purpose of giving courses of instruction looking to the prevention of accidents in mines and factories and on railroads and trolley lines, and of methods for first aid to the victims of such accidents, the car being used also for displaying approved safety appliances and illustrating methods followed in relief work.

260. THE CREDENTIALS OF EXAMINERS OF THE COMMISSION MUST BE HONORED BY CARRIERS WHETHER PRESENTED WITH OR WITHOUT SPECIAL LETTERS OF ADVICE.—While it has been the practice of the Commission when examining the accounts of interstate carriers through the board of examiners attached to the Bureau of Statistics and Accounts to give notice in advance to carriers, this is done for the convenience of the Commission and of the carriers and is not a requirement imposed upon the Commission by the law. The credentials of an examiner are all that is necessary to entitle him to free and full access to the carrier's records whether at its general offices or at a station or elsewhere, and the refusal to give access on the presentation of such credentials by an examiner is in violation of the law. The Commission, except in special cases where another course is desirable, will continue to give previous notice of any such examination in writing, unless the refusal of the carriers to honor the credentials of examiners when presented without such notice shall make it necessary to withdraw the practice.

February 8, 1910.

261. DEMURRAGE ACCRUING BECAUSE OF CARRIER'S FAILURE TO NOTIFY CONSIGNEE.—Although the tariffs of a carrier provided that it would not accept shipments consigned to "Shipper's Order, Notify" where the party to be notified is not located at destination, it nevertheless accepted such a shipment, and because of its failure on the transfer billing to note the shipper's instructions to notify the consignee at a distant point demurrage accrued at destination: *Held*, That the claim has no standing except upon the carrier's admission that its tariff rule was unreasonable and a showing that it has been changed; and if presented under such conditions and acted upon favorably, the order would require the maintenance of the newly established rule for a period of one year.

262. MISQUOTATION OF CANADIAN RATES.—Upon inquiry as to the rates on a locomotive “on cars,” from a point in New York to a point in the Province of Quebec, the carrier quoted a rate to Sherbrooke and a 7-cent local rate beyond, at 20 per cent less than the actual weight. Charges were collected upon that basis and the carrier now applies to the shipper for payment of an undercharge arising out of the fact that the tariff naming the rate beyond Sherbrooke contains no provision for a deduction from the actual weight of the shipment. The shipper makes the point that the rate beyond Sherbrooke is a Canadian rate and that the domestic carrier is therefore not prohibited by the act from adjusting the charges on the basis of the rate quoted by it: *Held*, That it would be a violation of law to omit the collection of the undercharge. (Also see ruling 256.)

February 14, 1910.

263. FREE INTERSTATE TRANSPORTATION TO OFFICERS AND EMPLOYEES OF BRIDGE COMPANIES.—Upon inquiry by an interstate carrier whether free transportation may lawfully be accorded to the officers and employees of a bridge company which makes annual reports but files no tariffs and collects no charges from shippers or passengers: *Held*, That free transportation may not lawfully be accorded to the officers and employees of a nonoperating company. (See rulings 95 and 355.)

The fact, subsequently developed, that trains move over the bridge only on signal and telegraphic orders by employees of the bridge company was held not to be sufficient ground for modifying the ruling.

264. CARLOAD MINIMUM UNDER A JOINT THROUGH RATE.—A tariff named a joint through carload rate from A to D of \$1 and provided that as to 30 cents of the rate the minimum weight should be 20,000 pounds and as to 70 cents of the rate the minimum should be 12,000 pounds. The Commission declined to entertain an informal request for reparation on the basis of that rate until the tariff was changed; and it was said that if the tariff were not changed a formal complaint would be entertained: *Held also*, That where two or more carriers publish a joint through rate they must publish in connection therewith one carload minimum weight for the through movement under that rate. This ruling is not to be understood, however, as condemning the publication in joint tariffs and the use of through rates made up in combination on a specific base point and providing one minimum weight in connection with the specified portion of the rate up to the base point and a different minimum weight in connection with the specified portion of the rate beyond the base point.

February 17, 1910.

265. REFUND OF PORTION OF UNUSED PASSENGER TICKET.—A man and wife holding round-trip tickets embracing a stop-over privilege at an intermediate point returned from that point without completing the rest of the journey. The tariff naming the excursion rate under which the tickets were sold also named an excursion rate to that intermediate point and return and prescribed the same conditions: *Held*, That the case falls within *Conference Ruling 76*. (Affirmed by ruling 303; see also ruling 115.)

March 7, 1910.

266. REFUND ON PASSENGER TICKET.—In selling a round-trip ticket the carrier's agent neglected to punch the return limit in the margin. The ticket was used on the going journey in accordance with its conditions. The tariff permitted a stop-over at an intermediate point on the return journey. When the holder presented the ticket for validation that agent punched a return limit in the margin, which rendered the ticket useless except for continuous passage back to the point of origin. Not observing this limitation, the passenger stopped over, and upon presenting the ticket at that point the agent marked it "Void," thus compelling the holder to purchase a ticket from that point to his home. He arrived there within the time limit under which the original ticket was sold, having traveled also over the route named in the tariff and otherwise complied with its conditions: *Held*, That the holder was entitled to a refund of the excess fare paid on account of the carrier's error, each of the carriers to reserve the earnings due it under the round-trip ticket. (See rulings 113, 167, and 277.)

267. GRAIN-DOOR ALLOWANCES.—Tariffs authorizing allowances for grain doors do not conform with *Conference Ruling 78* unless they state both the maximum allowance per car and the maximum allowance per grain door. (See rulings 119, 132, and 360.)

268. CARRIERS MAY NOT DEFEAT THEIR PUBLISHED THROUGH FARES WITH PARTY RATE TICKETS.—The tariffs of certain carriers provide a 10-party fare from A to B but no such fare from B to C. Upon inquiry whether it would be legal to ticket a party of ten from A to C on the basis of the party fare from A to B and the individual fares from B to C when such combination makes less than the joint through individual fare from A to C: *Held*, That while a party of ten, acting on their own initiative, would have the right to use the party fare from A to B and to purchase such transportation as is available from B to C, the carriers may not

ticket them through from A to C on such a combination and thus defeat their own published through fare. (See *Rules and Regulations Governing Checking of Baggage*, 35 I. C. C., 161.)

269. PUBLISHED DIVISIONS OF THROUGH RATES TO AND FROM MEXICO.—The purpose of Rule 72 of Tariff Circular No. 18-A requiring the domestic carriers to publish their divisions of rates to and from Mexico is to give to this Commission definite information as to their lawful earnings and was not intended as a means of exercising any jurisdiction over carriers in Mexico. (See ruling 209.)

270. DERRICK AND SIMILAR CONSTRUCTION CARS ARE NOT ORDINARILY SUBJECT TO DEMURRAGE CHARGES.—In the absence of specific tariff provision therefor demurrage does not accrue on derrick cars, pile-driver cars, and similar cars that are not and ordinarily can not be unloaded, when owned or leased by a contractor doing construction work on the line of the carrier concerned, or when standing upon storage tracks. (Qualifying ruling 222; see also ruling 123.)

March 8, 1910.

271. DESTRUCTION OF DOCUMENTS.—The regulations of the Commission respecting the preservation and destruction of the records and documents of common carriers also apply to the records and documents of all joint agencies maintained by or on behalf of carriers subject to the act.

March 14, 1910.

272. EXCURSION OF COMMERCIAL ASSOCIATION AT EXPENSE OF CARRIER.—The Commission can not sanction a proposed interstate excursion for certain commercial clubs, the members of which are to be carried at the expense of the railroad company and as its guests.

March 15, 1910.

273. SHIPMENT TRANSFERRED IN TRANSIT FROM ONE LARGER CAR TO TWO SMALLER CARS.—For a through shipment of an emigrant outfit the initial carrier, at the request of the consignor, furnished a 40-foot car which became out of order while on its line. At the junction point the connecting carrier transferred the shipment into two 36-foot cars, and in that form it moved to destination on the line of a third carrier. There was no joint through rate, but the second and third carriers maintained a rate for a 36-foot car, all weight in excess of a given minimum to be charged

for proportionately, the tariff, however, expressly forbidding the use of larger equipment. At destination charges were collected on the basis of two carloads from the point of transfer: *Held*, That in transferring the shipment, the connecting carrier ought to have loaded the full minimum weight into one car and to have adjusted the charges on the balance of the shipment in the second car at the less-than-carload rate. (Compare ruling 357.)

274. LARGER CAR FURNISHED AT CONVENIENCE OF INITIAL LINE UNDER TARIFF AUTHORITY FOR APPLYING THE MINIMUM ON THE SMALLER CAR ORDERED, CONNECTING LINE NOT PUBLISHING SUCH PROVISION.—(a) Complaints of alleged overcharges arise in connection with shipments that move over the lines of two or more carriers under combination rates, the initial carrier having a provision in its tariff that in case a car of certain dimensions or capacity is ordered by a shipper, and the carrier for its own convenience furnishes a larger car, such larger car may be used on the basis of the minimum weight applicable to the car ordered, while the connecting carrier does not have such tariff provision and therefore charges for the full minimum weight applicable to the car used. (See rule 66 of Tariff Circular 18-A.)

(b) The law imposes upon carriers the obligation of arranging to every reasonable extent for through carriage and through shipment. Neither the burden of following his shipment to a connecting point between two carriers and there transferring it, nor of bearing the expense of such transfer, can be laid upon the shipper. It is not deemed reasonable that in a case of this kind the shipper should be required to pay higher charges than he would have paid had the initial carrier furnished the equipment that is provided for in its tariff and that was ordered by the shipper. The carriers in the different classification territories ought to have, and should provide at the earliest practicable moment, a uniform rule on this subject.

(c) It is believed that where the initial carrier provides in its tariffs that if for its own convenience it furnishes a car larger than that ordered by the shipper, it will be used upon the basis of minimum weight applicable to the car ordered, and the connecting carrier to or over whose lines such shipment is moved has not such provision in its tariff, the initial carrier should note upon the bill of lading and upon the way bill or transfer bill, which accompanies delivery of a shipment to its connections, the fact that car of certain size was ordered and car of certain size was for its own convenience furnished by the carrier to be used on the basis of the minimum weight applicable to the car ordered; and that connecting carrier, receiving

such notice on the way bill or transfer bill and not having provision in its tariff which permits the use of the car on the basis of the lower minimum weight, should transfer the shipment into car of the size or capacity ordered by the shipper or into car to which the same minimum weight applies, without additional expense to the shipper.

This ruling outlines the policy which the Commission will follow in cases of this nature which may be brought before it. It is, of course, understood that shipper may not demand any car that is not provided for in the initial carrier's tariff. (See ruling 339; also *Gisholt Machine Co. v. C. & N. W. Ry. Co.*, U. R. Op. A-618.)

April 4, 1910.

275. HOURS OF SERVICE LAW—TRAIN BAGGAGEMEN.—The provisions of section 1 of the hours of service law apply to train baggagemen who are employees of the railway company and who are required by the rules of the company to perform or to hold themselves in readiness, when called upon, to perform any duty connected with the movement of any train. (See rulings 74 and 287.)

276. DEMURRAGE CHARGES—TARIFF AUTHORITY THEREFOR.—A consignor while loading cars at the point of origin detained them for several days before they were billed out for movement to interstate destinations. The initial carrier issued a tariff providing for demurrage, but the tariff naming the rate applicable on the movements neither provided demurrage charges nor referred to the initial carrier's tariff where such charges were specified: *Held*, That there was sufficient tariff authority for the collection of the charges by the initial carrier.

277. ERROR IN THE ISSUANCE OF PASSENGER TICKETS.—The Commission adheres to its formerly expressed view that connecting lines are entitled to divisions according to the transportation which they honor on presentation by the traveler, and therefore that a carrier whose agent had made an error in not properly punching half-fare and lower-class tickets must bear the full burden of the mistake. (See rulings 69, 113, 167, 247, 266, and 487.)

278. FREE TRANSPORTATION TO TRAVELING SECRETARIES OF Y. W. C. A.—Under the provisions of the act free or reduced rate transportation may not lawfully be accorded to traveling secretaries of a Young Woman's Christian Association.

April 5, 1910.

279. APPLICATION OF RATES ON ARTICLES SOLD UNDER TRADE NAMES.—A compound described under its technical chemical name in the tariff carrying the rate is offered for shipment and sold by a manufacturer under a trade name: *Held*, That while the packages may bear the trade name of the article, the shipper is not entitled to the rate applicable on the specified compound unless the packages, as tendered for transportation, are also labeled so as to indicate that they contain the compound.

280. ESTIMATED WEIGHTS PER PACKAGE.—Sometimes a transportation rate is stated to be a certain sum per package, and sometimes the rate is stated in cents per 100 pounds, and it is provided that the package will be taken at a stated estimated weight. Changes in size or dimensions of packages and disagreements as to the size or dimension upon which the estimated weight was fixed have caused troublesome complications. In so far as, and whenever, it is practicable, the size and dimensions of such packages should be clearly and accurately described and defined in the tariff.

April 11, 1910.

281. A CONCURRENCE BY ONE CARRIER IN THE TARIFFS OF ANOTHER DOES NOT LEGALIZE THE USE BY THE FORMER OF THE LOCAL RATES OF THE LATTER.—A tariff published by one carrier in addition to certain joint through rates also named local rates between two points on its line that were also served by the lines of another and concurring carrier: *Held*, That the local rates of the carrier that published the tariff could not be recognized as the rates of the concurring carrier on local movements between the two points in question.

282. JOINT RATE REDUCED TO THE SUM OF THE LOCALS, MINIMUM WEIGHT BEING INCREASED. (Rescinded by ruling 338.)

May 10, 1910.

283. DRAYAGE CHARGE RESULTING FROM MISROUTING.—Modified and restated in ruling 509.

284. INTERPRETATION OF MISROUTING RULING NO. 214. (Superseded by ruling 316.)

285. FREE TRANSPORTATION FOR THE REMAINS OF AN EX-EMPLOYEE.—The Commission finds no warrant in law for holding that free transportation may be accorded to the remains

of an ex-employee of a carrier who resigned from the service some time prior to his death. (Compare ruling 193.)

286. ADJUSTMENT OF CLAIMS FOR DAMAGES RESULTING FROM THE MISROUTING OF FREIGHT.—

(a) The Commission holds that it has exclusive jurisdiction over claims for damages arising from the misrouting of freight. (See rulings 139 and 214.)

(b) The statute of limitations embodied in section 16 of the act to regulate commerce, as amended, governs misrouting claims, and thereunder the Commission is without jurisdiction to take cognizance of claims presented more than two years after the delivery of shipments at destination. (See ruling 139; also *Phillips v. Grand Trunk Ry.*, 236 U. S., 662.)

(c) If a connecting line accepts a shipment at the junction point without routing instructions, it will be held responsible for any excessive charges that may directly accrue from its error in forwarding the shipment to destination via any other than the cheapest available route. (Amending rulings 137 and 199. See *Duluth & Iron Range R. R. Co. v. C., St. P., M. & O. Ry. Co.*, 18 I. C. C., 485; and *American Lumber & Export Co. v. A., T. & N. R. R. Co.*, 42 I. C. C., 260.)

(d) (Restated in ruling 509.)

(e) The Commission will exercise jurisdiction to award damages as against the carrier guilty of misrouting to the extent of the additional cost thus imposed on the delivering carrier.

(f) (Amended and restated in ruling 474c.)

March 16, 1908.

287. THE HOURS OF SERVICE LAW.—(a) The provisions of this act apply to all common carriers by railroad in the District of Columbia, or in any Territory of the United States, or engaged in the movement of interstate or foreign traffic; and to all employees of such common carriers who are engaged in or connected with the movement of any train carrying traffic in the District of Columbia, or in any Territory, or carrying interstate or foreign traffic. (See ruling 56.)

(b) SEC. 2. The requirement for ten consecutive hours off duty applies only to such employees as have been on duty for sixteen consecutive hours. The requirement for eight consecutive hours off duty applies only to employees who have not been on duty sixteen consecutive hours, but have been on duty sixteen hours in the aggregate out of a twenty-four hour period. Such twenty-four hour period begins at the time the employee first goes on duty after having

had at least eight consecutive hours off duty. The term "on duty" includes all the time during which the employee is performing service, or is held responsible for performance of service. An employee goes "on duty" at the time he begins to perform service, or at which he is required to be in readiness to perform service, and goes "off duty" at the time he is relieved from service and from responsibility for performance of service. (Qualified by ruling 74.)

(c) The act does not specify the classes of employees that are subject to its terms. All employees engaged in or connected with the movement of any train, as described in section 1, are within its scope. Train dispatchers, conductors, engineers, telegraphers, firemen, brakemen, train baggagemen, who, by rules of carriers, are required to perform any duty in connection with the movement of trains, yardmen, switch tenders, tower men, block-signal operators, etc., come within the provisions of the statute. (Qualified by rulings 108 and 275; see also ruling 88.)

(d) The proviso in section 2 covers every employee who, by the use of the telegraph or telephone, handles orders pertaining to or affecting train movements. In order to preserve the obvious intent of the law this provision must be construed to include all employees who, by the use of an electrical current, handle train orders, or signals which control movements of trains. (See ruling 88.)

(e) The prime purpose of this law is to secure additional safety by preventing employees from working longer hours than those specified in the act. Therefore a telegraph or telephone operator who is employed in a night and day office may not be required to perform duty in any capacity or of any kind beyond nine hours of total service in any twenty-four hour period. (See *United States v. G. R. & I. Ry. Co.*, 224 Fed. Rep., 667.)

(f) The phrase "towers, offices, places, and stations" is interpreted to mean particular and definite locations. The purpose of the law and of the proviso for nine hours of service may not be avoided by erecting offices, stations, depots, or buildings in close proximity to each other and operating from one a part of the day while the other is closed, and vice versa.

The statute is remedial in its intent and must have a broad construction so that the purpose of the Congress may not be defeated.

(g) The Commission interprets the phrase "continuously operated night and day" as applying to all offices, places, and stations operated during a portion of the day and a portion of the night, a total of more than thirteen hours.

The phrase "operated only during the daytime" refers to stations which are operated not to exceed thirteen hours in a twenty-four hour period, and is not considered as meaning that the operator thereat may be employed only during the daytime.

(h) The act provides that operators employed at night and day stations or at daytime stations may, in case of emergency, be required to work four additional hours on not exceeding three days in any week. Manifestly, the emergency must be real and one against which the carrier can not guard.

"In any week" is construed to mean in any calendar week, beginning with Sunday.

(i) (The Commission decided in conference on April 9, 1917, to rescind this paragraph because the question upon which it was made has since been judicially interpreted and is now pending in the courts upon appeal.)

(j) It will be noted that the penalties for violation of this act are against the "common carriers, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty," in violation of the law. It is clear that the officers and agents of carriers who are liable to the penalties provided in the act are those who have official direction or control of the employees; and that the penalties do not attach to the employees who, subject to such supervision or control, perform the service prohibited.

(k) SEC. 4. To enforce this act the Interstate Commerce Commission has all the powers which have been granted to it for the enforcement of the act to regulate commerce, including authority to appoint employees, to require reports, to examine books, papers, and documents, to administer oaths, to issue subpoenas, and to interrogate witnesses.

October 3, 1910.

288. COMPETENCY OF RAILROAD EMPLOYEES—CONDITION OF SIGNAL DEVICES.—Upon inquiry: *Held*, That, except in cases of accident, the Commission has no authority under the act to regulate commerce to look into the competency of railroad employees or the physical condition of block signals, and makes no general investigations of that nature.

October 4, 1910.

289. POSTING NAMES OF RESIDENT AGENTS AT BLIND SIDINGS.—The act requires a carrier to post the name of its resident agent in every office, warehouse, depot, or station building at which freight is received. But upon inquiry: *Held*, That this is not necessary at blind sidings where there is no station agent or any station building at which freight is received. (See ruling 86.)

October 10, 1910.

290. STATEMENT OF SEX OF CHILDREN ON APPLICATIONS FOR PASSES.—Upon inquiry by a carrier whether under *Conference Ruling 95* it is necessary that applications by one car-

rier on another for exchange transportation should show the sex of the child or children for whom free transportation is requested: *Held*, That an application in behalf of "John Smith and children" is not a sufficient compliance with the rule; it should be made in the name of "John Smith, one son, and two daughters," so that the representation that they are the children of the person named may affirmatively appear.

October 11, 1910.

291. PARAGRAPH 5 OF SECTION 15 OF THE AMENDED ACT DOES NOT APPLY TO TELEGRAPH COMPANIES.—Upon inquiry: *Held*, That the paragraph of section 15 of the amended act to regulate commerce giving the shipper the right to route his shipments does not apply to telegraph companies. (Also see Routing.)

November 7, 1910.

292. ALLOWANCES FOR FLOOR RACKS IN REFRIGERATOR CARS ANALOGOUS TO GRAIN-DOOR ALLOWANCES.—Certain carriers filed tariffs providing that when refrigerator cars without floor racks are set for loading, and shippers are required to furnish floor racks to protect the freight loaded, allowances will be made equal to the cost of the racks, but not to exceed \$2.50 per car. The question of the lawfulness of such tariffs being under consideration: *Held*, That the principle involved is the same as that relating to grain doors furnished by shippers. (See rulings 19, 78, 132, 267, and 360.)

293. RATES OR FARES PUBLISHED SUBSEQUENT TO FEBRUARY 17, 1911, IN VIOLATION OF SECTION 4 AS AMENDED.—Subsequent to February 17, 1911, any rate, fare, or charge maintained or imposed in violation of the long-and-short-haul provision of the fourth section of the act as amended, which rate, fare, or charge is not covered by an order of the Commission granting relief from the provisions of the section, or by pending application for such relief, will be held not to be brought into conformity with said section by a change in classification; cancellation of commodity rate leaving class rate or combination rate to apply; cancellation of a rate with provision that in lieu thereof a rate in some other tariff shall apply; correction of error in tariff; addition or elimination of routes without change in list of participating carriers; or by any other change which does not leave the rate, fare, or charge free from conflict with the law. (See rulings 299, 304, 318.)

294. TRANSPORTATION FROM FOREIGN COUNTRIES NOT ADJACENT THROUGH THE UNITED STATES TO AN ADJACENT FOREIGN COUNTRY.—(Withdrawn November 11, 1912; see *Seymour v. M. L. & T. R. R. & S. S. Co.*, 35 I. C. C., 492.)

295. RATES BASED ON VALUE OF MERCHANDISE.—Carriers may lawfully establish schedules of charges applicable to a specific commodity and graduated reasonably according to value. When such rates are published shippers are entitled to the rate corresponding to the actual value of the property offered by them for transportation. Shippers are not entitled under such rates to understate the actual value of shipments for the purpose of obtaining the rate applicable upon articles of less value. The valuation stated to carriers should correspond with the actual value as shown by invoices, etc. Shippers misstating the value of property for the purpose of obtaining the rate applicable to property of less value are guilty of misbilling and are subject to prosecution under section 10 of the act to regulate commerce. (See ruling 58; compare ruling 188; see also *The Cummins Amendment*, 33 I. C. C., 696; and *Express Rates, Practices, Accounts, and Revenues*, 43 I. C. C., 510.)

November 8, 1910.

296. POWER TO REQUIRE ADDITIONAL PASSENGER TRAIN SERVICE.—(a) Upon complaint of a resident at a suburban station that sufficient trains are not run to and from New York City during the morning and evening hours to accommodate commuters: *Held*, That the Commission is without authority to require the running of additional trains.

(b) Upon complaint of the discontinuance of a daily accommodation train between Washington and a rural community 27 miles distant, *Held*, That the Commission is without power to grant relief.

297. FREE AND REDUCED RATE TRANSPORTATION OF PERSONS TRAVELING AT THE EXPENSE OF STATE OR TERRITORIAL GOVERNMENTS.—*Conference Ruling 218* is confined to movements at the instance and expense of the United States. The Commission finds nothing in the law authorizing free or reduced rate transportation of persons, other than indigents, traveling at the expense of a state or territorial government. (See rulings 208e and 452.)

November 14, 1910.

298. THROUGH FARES HIGHER THAN THE COMBINATION OF INTERMEDIATE FARES.—Upon inquiry whether the prohibition against charging a greater compensation as a through

charge than the aggregate of the intermediate charges subject to the provisions of the act is to be construed as meaning that fares must be made not higher than the lowest possible combination of intermediate fares, and if not, upon what basis they may be constructed: *Held*, That the fares must be constructed upon the basis of being no higher than the lowest combination of fares that are published and filed as available for interstate travel or in making up interstate fares. If a carrier desires to exclude from this consideration any of its purely intrastate fares it must refrain from publishing and filing such intrastate fares as available for use in making up interstate fares. (See *United States v. N., C. & St. L. Ry.*, U. R. Op. A-691; and *United States v. B. & O. R. R. Co.*, 15 I. C. C., 470.)

December 17, 1910.

299. APPLICATION OF SECTION 4, AS AMENDED JUNE 18, 1910, TO EXPORT AND IMPORT RATES.—(a) Inland export and import rates are subject to the provisions of the act and within the jurisdiction of the Commission.

(b) The fourth section of the amended act forbids carriers subject thereto, without authority from the Commission in accordance with said section, to charge more for the transportation of a like kind of export or import traffic for a shorter than for a longer haul over the same line in the same direction; that is, as we understand the law, the validity of a rate under this section is determined by comparison of an export rate with an export rate, or an import rate with an import rate.

(c) So far as the fourth section is concerned, carriers are not required in the first instance to establish export and import rates which shall be measured and limited by domestic interstate rates between the same points of origin and destination in the United States; but as export and import rates, as well as domestic interstate rates, are subject to the provisions of the act and the jurisdiction of the Commission, it is clear that the reasonableness of any of these rates under the provisions of section 1, and questions of discrimination under the third section, may all be considered and the Commission may condemn any discrimination in export and import rates, upon comparison with those applicable on domestic interstate traffic, to the extent that the same may be found unjust or unreasonable in any particular case upon investigation and full hearing.

(Section 4 as amended is also interpreted in rulings 293, 304, 318. See *Import Rates on Manganese Ore*, 12 I. C. C., 666.)

January 14, 1911.

300. BROKERAGE CHARGES BY EXPRESS COMPANIES ON SHIPMENTS FROM ABROAD.—A suit case consigned from London in care of an express company at New York City for further

transportation inland by express was appraised by the customs officials, with its contents, at the sum of \$363. Upon complaint of a charge of \$3 exacted by the express company for its services in clearing the shipment through the customs house, no scale of such charges being filed with this Commission, it was *Held*: That brokerage charges of this nature are not within the jurisdiction of the Commission, not being a part of the transportation service. (See rulings 7, 221, and 444.)

February 13, 1911.

301. EMPLOYEES ON PRIVATELY OWNED OR CHARTERED CARS.—Upon inquiry: *Held*, That porters, cooks, or waiters on privately owned or chartered cars moving under tariff authority may be carried as employees.

302. TELEGRAMS RELATING TO SHIPMENTS.—Telegraphic instructions or inquiries made by shippers to or of a carrier in relation to their shipments may not properly be paid for by the carrier unless so provided in its published tariffs; a telegram sent by the carrier to the shipper relating to his traffic, and his reply thereto, pertain to the business of the carrier and may be sent at its expense. (Construed by rulings 327 and 351; see rulings 363, 480.)

February 22, 1911.

303. REDEMPTION OF TICKETS.—Under appropriate provision in its tariffs a carrier may redeem the unused portion of a round-trip ticket on the basis of a lower round-trip fare to a point directly intermediate, provided the latter fare was lawfully available for the journey as actually commenced and concluded; or it may, under a tariff provision to that effect, exchange a round-trip ticket to a point directly intermediate for a round-trip ticket available at the same time to a more distant point, upon collecting the difference in the fares of the two tickets. (Affirming ruling 265; see also rulings 76, 115.)

March 13, 1911.

304. APPLICATION OF SECTION 4 AS AMENDED JUNE 18, 1910.—(a) The fourth section applies to all rates and fares, but in determining whether its provisions are contravened rates and fares of the same kind should be compared with one another; that is, transshipment rates should be compared with transshipment rates; proportional rates with proportional rates; excursion fares with excursion fares; and commutation fares with commutation fares. It would not be in violation of the fourth section, for instance, if a

proportional rate to or from a given point were lower than the regular rate to or from an intermediate point, nor if the commutation fare to or from a more distant point were lower than the regular fare to or from an intermediate point. (Rulings 309, 310. See *Southern Illinois Millers Asso. v. L. & N. R. R. Co.*, 23 I. C. C., 673; and *Rates on Grain and Grain Products to Texarkana, Ark.*, 29 I. C. C., 36.)

(b) A proportional rate is defined as one which applies to part of a through transportation which is entirely within the jurisdiction of the act to regulate commerce; that is, the balance of the transportation to which the proportional rate applies must be under a rate filed with this Commission. A rate to a port for shipment beyond by a water carrier not subject to the provisions of this act would not be a proportional rate. (See *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.*, 24 I. C. C., 155.)

The foregoing holding is not intended to approve the lawfulness of any existing transshipment rate.

(c) An excursion rate is one which provides for a return to the initial point or some corresponding point.

(d) Where from the absorption of a switching charge it results that the total transportation charge from a more distant point to the point where the property is delivered is less than the total transportation charge from or to an intermediate point the fourth section is violated. Owing, however, to the very general practice of absorbing switching charges from competitive and not from noncompetitive stations, and in view of the fact that much benefit and little complaint results, the Commission will, by general order, permit a continuance of this practice, reserving for consideration and determination individual cases which may require special consideration. (Such an order was entered March 20, 1911.)

(e) If a carrier has been given authority to maintain from or to noncompetitive intermediate points rates higher than those from or to more distant competitive points and a new intermediate station is opened, rates from or to such intermediate station which are the same or in harmony with those authorized may be established by the carrier without special authority from the Commission.

(f) If a carrier is authorized to maintain rates to or from a given point which are not in conformity with the fourth section, it may establish rates upon branch lines connecting with the main line at these points which are higher than such intermediate rates by arbitraries or by the branch-line locals, without special authority from the Commission.

(Section 4 as amended is also interpreted in rulings 293, 299, 318.)

305. APPLICATION OF THE AMENDED ACT TO TELEGRAPH AND TELEPHONE COMPANIES.—(a) Each and every telegraph and telephone company which transmits messages over its line or lines from a point in one state, territory, or district of the United States to any other state, territory, or district of the United States, or to any foreign country, is subject to the provisions of the act.

(b) If a telegraph or telephone company, the line of which is wholly within a single state, territory, or district of the United States, receives a message within such state, territory, or district of the United States, for transmission to a point without the state, territory, or district of the United States, which it transmits over its line to another point in the same state, territory, or district of the United States and there delivers it to an interstate line for transmission to destination, the first-named company by virtue of its participation in this transaction, is not made subject to the provisions of the act; unless there be an arrangement between that company and its connection for through continuous transmission of such messages, in which latter case all of the participating companies in such through continuous transmission are subject to the provisions of the act.

(c) If two or more lines are connected so that a person within one state, territory, or district of the United States talks with a person at a point without such state, territory, or district of the United States, or so that a message is transmitted directly from a point within a state, territory, or district of the United States to a point without the same, the transmission of messages in this manner constitutes interstate commerce and brings all of the participating lines within the purview of the act.

(d) It follows that telegraph and telephone companies subject to the act, as above indicated, must conform to the provisions of section 1 thereof, requiring that all of their rates and charges for the transmission of interstate messages shall be reasonable and just, and that such companies may lawfully issue franks covering free interstate service or may grant free interstate service to the same extent, and subject to the same limitations as other common carriers under the provisions of said section. (See rulings 95a, par. 2, 161, 219, and 364.)

(e) Such telegraph and telephone companies subject to the act are also governed by the provisions of section 3 forbidding any undue or unreasonable preference or advantage by rebates or otherwise, or any undue or unreasonable prejudice or disadvantage in any respect whatsoever, and are subject to the lawful orders of the Commission made pursuant to the provisions of section 15 of the act, and also of section 20 thereof respecting the keeping of accounts and memoranda and the making of reports to the Commission.

April 3, 1911.

306. STATUTE OF LIMITATIONS NONOPERATIVE AS BETWEEN CARRIERS.—Before the expiration of two years a delivering line discovered and at once refunded an overcharge; upon demand made by it after the two years had expired a connecting line declined to repay its share, on the ground that the statute had run: *Held*, That in such cases the statute does not run as between carriers. (See rulings 10, 220j and 307.)

307. CLAIMS BARRED BY THE STATUTE OF LIMITATIONS.—Overlooking a higher through rate, charges were collected on the sum of the intermediate rates. After two years had expired the through rate was reduced to that basis and still later the balance of the through rate legally in effect on the date of the shipment was collected. Upon presentation of the claim some months later: *Held*, That it was barred by the statute, and that the case is controlled by *Blinn Lumber Co. v. S. P. Co.*, 18 I. C. C., 430. (See rulings 10, 220j, 306, and 508.)

308. USE OF FREE TRANSPORTATION BY RAILROAD EMPLOYEE WHILE CONNECTED WITH MUNICIPAL OFFICE.—Upon inquiry: *Held*, That a railroad employee on leave of absence for the purpose of filling a term in a public office, or to engage in other business, is not entitled during such period to free passes either for himself or his family. (See ruling 208d.)

309. PASSENGER FARES UNDER THE FOURTH SECTION.—*Held*, That carriers may not disregard the fourth section in order that passenger fares may be stated in multiples of five. (See ruling 304a.)

310. PASSENGER FARES UNDER THE FOURTH SECTION.—*Held*, That in determining whether the provisions of the fourth section are contravened, mileage, commutation, party rate, and half fares for children should be compared only with fares of the same character. (See ruling 304a.)

April 4, 1911.

311. FREE TRANSPORTATION OF PROPERTY FOR COUNTY AUTHORITIES.—(Restated in ruling 452.)

312. TERMINAL COMPANIES SUBJECT TO ACT.—Upon inquiry: *Held*, That terminal companies must file statistical reports as required by the Commission.

April 10, 1911.

313. DEMURRAGE RULES.—(See Code of National Car Demurrage Rules indorsed by the Commission January 17, 1916.)

May 1, 1911.

314. COLLECTION OF UNDERCHARGES.—The law requires the carrier to collect and the party legally responsible to pay the lawfully established rates without deviation therefrom. It follows that it is the duty of carriers to exhaust their legal remedies in order to collect undercharges from the party or parties legally responsible therefor. It is not for the Commission, however, to determine in any case which party, consignor or consignee, is legally liable for the undercharge, that being a question determinable only by a court having jurisdiction and upon the facts of each case. (Superseding rulings 3 and 187. See also rulings 16 and 156 and *Y. & M. V. R. Co. v. Zemurray*, 238 Fed., 789.)

315. USE OF INTRASTATE MILEAGE BOOKS ISSUED IN EXCHANGE FOR ADVERTISING.—A state statute permits the exchange of intrastate mileage books for advertising. Upon inquiry: *Held*, That such books may not be used upon any part of an interstate journey. (See *C., I. & L. Ry. Co. v. United States*, 219 U. S., 486.)

316. CONFERENCE RULING 284 SUPERSEDED.—Upon inquiry as to the application of *Conference Rulings 190 and 214* to routes made up partly of a car ferry: *Held*, That routes involving the transshipment of freight from a rail line to a water line or from a water line to a rail line are "rail-and-water routes," and that routes composed of rail lines connected by car ferries over which the freight is ferried in the car constitute "car-ferry routes" and are understood to be included in the general term "all-rail." (See *Hollingshead & Blei v. P. & L. E. R. R. Co.*, 18 I. C. C., 193.)

Held further, That where a shipper does not specify a particular route or a rail-and-water route, the carrier's agent must consider car-ferry routes as available in performing the duty of routing a shipment over the cheapest route. (See ruling 190, interpreting ruling 214.)

May 2, 1911.

317. ERRORS IN TRANSMISSION OF TELEGRAPHIC MESSAGES.—Upon inquiry: *Held*, That the Commission has no jurisdiction over claims for damages due to alleged errors in the transmission of telegraphic messages. (See *Unrepeated Message Case*, 44 I. C. C., 670.)

May 8, 1911.

318. APPLICATION OF FOURTH SECTION WHEN ONE OR MORE POINTS ARE IN A FOREIGN COUNTRY.—The fourth section does not apply when the more distant point and the intermediate point are in a foreign country; nor when the point of origin and point of destination are both in the United States and the intermediate point is in a foreign country. (See rulings 293, 299, 304, and 447.)

June 2, 1911.

319. FREE TRANSPORTATION OF WITNESSES.—Upon inquiry: *Held*, That a carrier may not lawfully issue free interstate transportation to one not otherwise entitled to it in order to enable him as a witness to attend a proceeding in court unless the carrier is a party thereto or has a direct legal interest in the result. (See ruling 414.)

320. FREE TRANSPORTATION OF INSTRUCTOR IN USE OF BOILER COMPOUND.—(Overruled by ruling 336. See ruling 169.)

321. SHIPPER MAY DIRECT TERMINAL ROUTING.—In view of the amendment to section 15 of the act, paragraph *b* of *Conference Ruling No. 214* is now amended so as to read as follows:

(*b*) In order to secure desired delivery to industries, plants, or warehouses and avoid unnecessary terminal or switching charges, the shipper may direct as to terminal routing or delivery of shipments which are to go beyond the lines of the initial carriers; and his instructions as to such terminal delivery must be observed in routing and billing such shipments. When shipments are accepted without specific routing instructions from shipper, where all-rail rates and rail-and-water rates are available, the carrier's agent must have the shipper designate which of the two he wishes to use. Carriers will be held responsible for routing shown in bill of lading. (See rulings 190 and 316.)

322. SUSPENSION OF TARIFF SCHEDULES.—The authority conferred on the Commission by the amendatory act of June 18, 1910, to suspend schedules stating new individual or joint rates, fares, or charges, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, was not intended to withdraw from carriers the right to initiate their rates, fares, charges, and regulations and does not mean

that in every case of advanced rates or charges the schedules should be suspended. The statute vests a discretion in the Commission in that regard and contemplates that it will be exercised in a judicial spirit. Except in cases where it acts on its own initiative the Commission will not ordinarily suspend the operation of a schedule unless the changes complained of are called to its attention at least 10 days before the effective date of the schedule, thus giving the Commission time in which to act intelligently and to avoid discriminations that might result from the improper suspension of a schedule.

Requests for such action by the Commission should be made in the form of a complaint indicating the schedule by its I. C. C. number and specifically referring to the parts thereof as to which suspension is asked, together with reasonably detailed explanations as to the probable effect of the proposed new rates, fares, etc.

June 8, 1911.

323. OFFSETTING OF UNDER OR OVER CHARGES.—It appearing that some confusion has been caused by the Commission's *Conference Rulings Nos. 48, 133*, and its ruling of February 14, 1911, the following is issued in lieu of the three rulings above mentioned:

The Commission has no authority to control the disposition of an overcharge. The carrier must charge no other than its lawful rate and the failure to collect the full rate as to any shipment is a violation of the law, as is the collection of more than the full rate. The Commission declines to declare that an overcharge may be offset as against an uncollected undercharge; such offset is not within the power of the Commission to authorize or condemn. (See *Illinois Cent. R. Co. v. W. L. Hoopes & Sons*, 233 Fed. Rep., 135.)

June 19, 1911.

324. DIVISIONS ON COMPANY COAL.—Upon inquiry: *Held*, That it is unlawful for carriers to make special and discriminatory divisions of joint rates upon locomotive fuel as between an originating or participating carrier and a purchasing carrier. In the division of joint rates a railroad must be treated precisely as any other shipper is treated, and the Commission will regard any special division as a device to defeat the published rate. All divisions upon fuel coal must be made in good faith without respect to the fact that one of the carriers is the purchaser of such coal. (See *Rates on Railroad Fuel and Other Coal*, 36 I. C. C., 1, and order in *Divisions of Joint Rates on Railway Fuel Coal*, 37 I. C. C., 265; also ruling 486.)

June 20, 1911.

325. LEASE OF LAND BY SHIPPER FROM A CARRIER AT NOMINAL RENTAL UNLAWFUL.—Under a lease in which a nominal rental is reserved a private person has erected a grain elevator upon land belonging to an interstate carrier: *Held*, That the arrangement constitutes an undue preference. (See rulings 94 and 421.)

October 9, 1911.

326. BAGGAGE CHECKED BY INITIAL LINE WITH ROUTING INADEQUATELY SPECIFIED.—Upon inquiry as to the legal propriety of a proposed agreement by an association of general baggage agents providing, in substance, that an intermediate line shall forward to checked destination by the most direct route any baggage received by it not fully routed; that the initial line shall report to the lines actually moving the baggage the amount of any excess baggage charges collected by it; and that in case there is more than one station at destination the initial as well as the terminal line shall be advised of the station at which the baggage may be found, it was *Held*, That, subject to such modified conclusions as may be required in the light of further information, the Commission sees no present objection to such rules if properly published in the tariffs.

October 10, 1911.

327. TELEGRAMS RELATING TO SHIPMENTS—RULING 302 CONSTRUED.—Telegrams from a shipper relating to his traffic must be paid for by him, but a carrier may lawfully answer such a message at its expense. (See rulings 302, 351, 363, and 480.)

November 6, 1911.

328. SAFETY APPLIANCES—CARS OF SPECIAL CONSTRUCTION.—Locomotives while equipped with snowplows or flangers are to be regarded as cars of special construction within the meaning of the order of March 13, 1911.

329. SAFETY APPLIANCES—ORDER OF MARCH 13, 1911, CONSTRUED.—The order entitled "United States Safety Appliance Standards," adopted on March 13, 1911, is interpreted with respect to the details mentioned as follows:

1. That gondola and ballast cars with swinging side doors at ladder locations may be considered as cars of special construction.
Ladders and handholds need not be applied to swinging side doors.
A side vertical handhold shall be placed on corner post of such cars, as nearly as possible over sill step.

2. That high-side gondola and ballast cars with end platforms 18 inches or more in length may be considered as cars of special construction.

Ladders shall be placed on such cars as prescribed for high-side gondola and hopper cars, with sill step under ladder, or as near under ladder as car construction will permit. Ends and side of cars to be equipped with handholds in the same manner as flat cars.

3. Ladders—spacing of ladder treads. That the spacing of top ladder treads shall be taken from eave of roof at side of car, whether latitudinal running board is used or not. (Shown on plates illustrating United States safety appliance standards, issued by the Commission July 1, 1911.)

4. Box and other house cars—automobile cars with swinging end doors—end ladders:

That these cars may come under the head of cars of special construction, as per clause on page 37 of the order, and the end ladders placed as nearly as possible to designated location.

November 14, 1911.

330. FREE CARRIAGE OF RAILWAY Y. M. C. A. LIBRARY BOOKS.—It is not unlawful for an interstate railroad to carry without charge, for use by railway employees, books belonging to the libraries of Railway Young Men's Christian Associations.

331. TRANSFER OF SHIPMENT IN TRANSIT TO ANOTHER CAR.—A shipment started to move under a joint through rate and an established minimum for the car of the size in which it was loaded, but for the convenience of the carrier was subsequently transferred into a smaller car taking a lower minimum under the same through rate. Charges were collected on the actual weight, which was in excess of the lower and less than the higher minimum weight: *Held*, That where a joint through rate is in effect the through charges are not affected by such a transfer of the shipment in transit from one car to another whether larger or smaller; and that the through charges here should have been collected at the joint through rate and on the basis of the minimum weight applicable on the car ordered or accepted by the consignor for the movement. (See rulings 273, 274, 339, and 357.)

December 11, 1911.

332. CARRIERS FAILING TO OBEY ROUTING INSTRUCTIONS LIABLE TO PROSECUTION.—(Rescinded by ruling 502.)

333. COMPANY MATERIAL.—Material for use in the repair of one of its cars was shipped by a carrier to the shop of a connecting line. Upon inquiry whether the material could move free of charge

over both roads it was *Held*, That in cases of this kind company material may move without charge only over the line at whose expense the repair is made. (See ruling 373.)

January 9, 1912.

334. RATES ON GASOLINE MOTOR CARS MOVING UNDER THEIR OWN POWER.—The movement of a gasoline motor car, from the manufacturer to the purchaser, over the rails of a common carrier is transportation that is subject to the act, when between interstate points, notwithstanding the fact that it moves under its own power and is operated by employees of the manufacturer. Such transportation is lawful only when a rate for it has been duly published. Except on the commodities specifically enumerated in section 1 of the act, rates can not lawfully include the passage of attendants, and as gasoline motor cars are not so enumerated the attendants must pay fares on the basis of the regularly published passenger fare then in effect. In adjusting its rates the carrier should take into consideration the conditions surrounding the movement of traffic of this kind.

335. FREE TRANSPORTATION OF HOUSEHOLD GOODS.—A bureau of the American Railway Association, known as the Bureau for the Safe Transportation of Explosives, ordered one of its inspectors to permanent duty at another station. *Held*, That the carriers in the route between the two points can not lawfully transport his household goods free of charge, even though they are members of that association.

336. FREE TRANSPORTATION OF INSTRUCTOR IN THE USE OF BOILER COMPOUNDS.—Annual passes may not lawfully be issued to or used by employees of companies manufacturing boiler compounds; nor may a carrier transport such persons free of charge when going to or from instruction work on the line of a connection. A carrier using the compound in its locomotive boilers may give free transportation to an expert of the manufacturer whom it desires to send over its own line to instruct its employees in the use of the compound, but only for that purpose and to the extent necessary in the performance of that duty, provided the agent does not sell or solicit orders. (*Overruling Conference Ruling 320. See ruling 346.*)

January 15, 1912.

337. AGENTS FOR CARRIERS MAY NOT ACT AS AGENTS FOR SHIPPERS.—At certain docks the stevedores, who are also the loading contractors for a connecting rail line, unload the

vessel and load its cargo into the cars, handing a loading slip to the rail line, upon which the latter issues bills of lading. For the purpose of defeating the through rate, or in such a manner as to have that result, they also act as agents for consignees, and forward to inland rail points goods received by water at the docks and originally intended for such destinations. (See *In re Wharfage Facilities at Pensacola, Fla.*, 27 I. C. C., 258; and *Doran & Co. v. N., C. & St. L. Ry.*, 33 I. C. C., 527.)

Affirming the principle of *Conference Ruling 98*, it is *Held*, That neither a railroad nor its agents or employees may lawfully act as forwarding agents for shippers. (See ruling 365.)

February 5, 1912.

338. JOINT RATE REDUCED TO THE AGGREGATE OF THE INTERMEDIATES, MINIMUM WEIGHT BEING INCREASED.—A joint rate exceeding the aggregate of the intermediate rates was later reduced to equal their sum, the minimum weight, however, being increased. *Held*, That in such cases reparation, when awarded informally by the Commission, will be on the basis of the newly established joint rate and minimum weight, subject of course to the actual weight when higher than the new minimum. (Rescinding ruling 282.)

339. TWO SMALL CARS FURNISHED IN LIEU OF A LARGER CAR ORDERED BY THE SHIPPER.—Upon informal complaints and numerous inquiries it is *Held*, That the act of a carrier in furnishing two small cars in lieu of the larger car ordered by a shipper under appropriate tariff authority is binding, at the rate and minimum applicable to the car ordered, upon all the carriers that are parties to the joint rate under which the shipment moves from the point of origin; the shipper is entitled to all privileges in transit, to reconsignment, and to switching at the same charges as would be applicable under the joint tariff had the shipment been loaded into one car of the capacity ordered; and demurrage will likewise accrue on that basis. If the shipment moves beyond the point to which the joint rates apply, the connecting line or lines are entitled to and should collect their transit, reconsigning, switching, and demurrage charges as provided in their own tariffs.

In all cases the initial carrier will be liable for such additional charges as may be imposed on the shipper by reason of its failure to furnish a car of the capacity ordered. Carriers that are parties to the joint rate under which the shipment commenced to move may share in such additional expense so incurred by the initial carrier.

Rule 66 of Tariff Circular 18-A; *General Chemical Co. v. N. & W. Ry.*, 15 I. C. C., 349; *Conference Ruling 250*; *Milwaukee Falls*

Chair Co. v. C., M. & St. P. Ry., 16 I. C. C., 217; *Conference Ruling 59*; *Noble v. B. & O. R. R.*, 22 I. C. C., 432; and *Conference Ruling 274* reaffirmed, with the understanding, however, that the duty of transferring the shipment rests upon the carriers and not necessarily upon the connecting carrier. (See ruling 357 amending ruling 250.)

340. RESTAURANT EMPLOYEES AT A UNION STATION NOT ENTITLED TO FREE TRANSPORTATION.—A restaurant is conducted in a union station primarily for the benefit of the traveling public by a terminal company claiming to be a common carrier within the meaning of the act. Upon inquiry, *Held*, That its employees in the restaurant are not entitled to free transportation. (See ruling 87.)

341. SWITCHING ROADS—CONCURRENCES.—Two lines having no direct connection effect an interchange of traffic through a terminal railroad under an arbitrary switching charge of \$3 a car, which they absorb out of the joint rate. Upon inquiry it is *Held*, That it is not necessary that the switching road be shown as concurring in the joint through rate if its tariff of switching charges is on file and the tariff naming the joint through rate provides that such charges will be so absorbed. (See ruling 402.)

February 12, 1912.

342. HOURS OF SERVICE LAW.—A trainman required by the rules of the carrier, in conjunction with his duties as trainman, to send, receive, or deliver orders affecting the movement of trains comes within the proviso of section 2 of the hours of service act, and therefore a carrier may not require a trainman, who has been on duty longer than the limit of time fixed for a telegraph or telephone operator, to send, receive, or deliver orders affecting the movement of trains, as a part of the duties regularly assigned to him.

But upon inquiry whether the practice of requiring conductors of trains delayed at stations where there is no regularly assigned telegraph or telephone operator on duty, and conductors of trains about to be overtaken by superior trains, to telephone or telegraph the train dispatcher for instructions is in accord with the act and with the Commission's order of interpretation of June 25, 1908, *Held*, That a trainman who has been on duty for more than 9 hours or for more than 13 hours is not prohibited from occasionally using the telegraph or telephone to meet an emergency.

March 4, 1912.

343. ICED REFRIGERATOR CAR NOT USED.—A refrigerator car set for loading, fully iced, was not used because of weather

conditions, and the shipper refused to pay the ice company's bill: *Held*, That while an action may doubtless lie at common law, it is not clear, in the absence of a tariff provision to cover such cases, that the ice charges are collectible under the act.

344. RATES LAWFULLY CANCELED.—Upon inquiry, *Held*, That a rate once lawfully canceled may not be reinstated as a reissued item.

345. FREE TRANSPORTATION.—The free-pass provision of section 1 is construed as implying that free transportation may be accorded by carriers to Canadian customs and immigration inspectors on duty.

March 11, 1912.

346. FREE TRANSPORTATION OF INSTRUCTORS.—In the interest of safety and economy many carriers have adopted certain appliances and methods in the use of which by their employees instruction and supervision are essential to proper results and can only be given by experts. The contracts under which carriers undertake to use such appliances or materials not infrequently contain provisions requiring the vendor to furnish experts for these purposes and the carrier to transport them over its line free of charge.

The successful use of such appliances or materials makes for the public interest, and upon full consideration of numerous inquiries in the light of more complete information, and differentiating clearly between vendors' expert demonstrators and instructors and other of their agents, it is *Held*, That where a carrier purchases appliances, materials, or supplies, in the use of which instruction and supervision of employees by experts are essential to proper and successful results, it may, in the contract of purchase, undertake to grant free transportation over its own line to such expert demonstrators and instructors as are furnished by the vendor under the contract, to the extent and only to the extent that such transportation is necessary for the performance of their duty on that line; and provided that no such expert so traveling under free transportation shall in any way engage in the sale of goods or in the soliciting or taking of orders therefor: *Held further*, That such experts are not railway employees in the sense that they may be given free transportation to travel over one road or system for the purpose of reaching another road or system to which they may have been assigned upon like duty.

The views expressed in *Conference Ruling No. 208* as to the general application of the law are adhered to; *Conference Rulings 134* and *336*, in which the principles of *Conference Ruling 208* are applied, are not to be understood as being modified by anything here said.

347. ERROR IN STATING CONCURRENCE NUMBER.—

Through inadvertence a tariff showed an erroneous number of a lawful concurrence by a participating carrier: *Held*, That the tariff is not invalidated by a minor error of that character but is a lawful issue, and is binding upon the participating carriers.

348. FABRICATION OF STRUCTURAL STEEL.—

In making shipments of structural iron and steel the consignor intended to take advantage of the privilege of fabricating the material in transit, but failed to note on the bill of lading as required by the tariff "To be fabricated at ——." As a result of this omission higher charges accrued: *Held*, That the Commission will not authorize the carrier to refund the additional charges resulting from the shipper's own error. (See *Woodland Lumber Co. v. N. S. R. R. Co.*, 38 I. C. C., 710.)

349. DESTRUCTION OF RECORDS.—

The sale of documents, records, and papers of an interstate carrier as waste paper is held to be a lawful destruction of such records within the meaning of the rules and regulations of the Commission touching the destruction of records, provided all other requirements under those rules and regulations have been complied with.

April 1, 1912.

350. RATES APPLICABLE TO SHIPMENTS STOPPED

SHORT OF INTENDED DESTINATION, AND FARES AP-

PLICABLE TO PASSENGERS DISCONTINUING JOUR-

NEYS.—

Under transit tariffs requiring the payment of the full rate to final destination at the time the shipment is delivered at the transit point, it sometimes occurs that a shipment is never forwarded to the destination to which charges have been paid: *Held*, That it is not unlawful or improper in such cases to refund the charges that have been paid in excess of what the lawful charges on the shipment would have been if the transit point had been its final destination. (See *Clinton Sugar Refining Co. v. C. & N. W. Ry. Co.*, 28 I. C. C., 367, and *Pillsbury Flour Mills Co. v. G. N. Ry. Co.*, 39 I. C. C., 357.)

Held further, That, subject to the time limit of ticket, the same rule applies where a passenger has purchased a ticket and has abandoned his journey at a point short of the destination shown on his ticket and also to a prepaid shipment of freight that is stopped and delivered at a point short of that to which prepaid. (See ruling 115.)

351. TELEGRAMS OF SHIPPERS.—

Upon inquiry, under *Conference Ruling 327*, whether carriers may send at their expense over shippers' names telegrams directing the routing of certain

traffic: *Held*, That carriers may not pay for such telegrams. (See rulings 302, 327, 363, and 480.)

April 2, 1912.

352. FREE TRANSPORTATION.—A carrier that has acquired a railroad by foreclosure, reorganization, or otherwise, may lawfully continue to issue free transportation to the widows, during widowhood, and minor children, during their minority, of persons who died while in the service of the company formerly operating the road.

353. SHIPMENTS BY WATER.—In the application of the act, a shipment by water from one port to another in the territory of the United States is to be regarded as coastwise business; a shipment by water from a port of the United States to a port of any foreign country, even though adjacent, is export business. (See rulings 359, 369, and 468.)

354. THROUGH SHIPMENTS VIA WATER AND RAIL.—Upon inquiry, and referring to water carriers as defined in section 1 of the act: *Held*, That if a rail carrier and a water carrier separately publish and file their rates applicable to through shipments, traffic over such route may lawfully be transported under through bills of lading, even though the rates are not joint through rates.

Held further, That a water carrier may not lawfully accept shipments for transportation on through bills of lading issued by a rail carrier unless the water carrier has lawfully published and filed rates applicable thereto.

Held further, That the acceptance by a water carrier of through traffic on through bills of lading issued by a rail carrier is an evidence of an arrangement for continuous carriage which subjects the traffic to the provisions and jurisdiction of our act. (See rulings 66, 155, 201, 401, and 422.)

These holdings shall not be construed so as to conflict with Rule 71, Tariff Circular 18-A, which covers export and import traffic. (Last paragraph as amended in conference November 11, 1912.)

Held further (as amended Mar. 6, 1917), That it is not lawful for a carrier subject to this act to issue through bills of lading under an arrangement with a water or other carrier for a continuous carriage until such water or other carrier shall have lawfully filed with this Commission rates applicable to such carriage.

April 8, 1912.

355. FREE TRANSPORTATION OF OFFICERS OF NON-OPERATING COMPANY.—A railroad constructed by municipal trustees was afterwards leased under a contract antedating the act

to regulate commerce and providing that the lessee company would issue annual passes to the trustees and their agents and would furnish a car for their use in inspecting the line.

Upon inquiry whether these covenants, being a part of the consideration for the lease, may now be complied with by the lessee company, it is *Held*, That officers, directors, and other persons connected with a nonoperating company are not entitled to use free transportation. (See rulings 95 and 263.)

May 6, 1912.

356. DISCLOSING NAME OF CONSIGNEE.—Upon inquiry: *Held*, That it is unlawful for a carrier to disclose to a shipper the name of the ultimate consignee of a shipment reconsigned in transit by the original consignee. (Sec. 15, act to regulate commerce as amended June 18, 1910. See *In the Matter of Freight Bills*, 29 I. C. C., 498, and 38 I. C. C., 91.)

357. DEMURRAGE, SWITCHING, RECONSIGNMENT, AND DIVERSION CHARGES ON A CARLOAD SHIPMENT TRANSFERRED INTO TWO CARS.—In case a shipment leaves a point of origin in a single car and for the convenience of the carriers is transferred in transit into two cars which are subsequently detained at destination beyond the free time, demurrage should be assessed as for one car only, so long as either car is detained; and in such cases switching, reconsignment, and diversion charges should be assessed as for one car only. (Amending ruling 250; see also rulings 273, 274, 331, and 339. Also *Scudder v. T. & P. Ry. Co.*, 21 I. C. C., 60.)

358. DEMURRAGE AT PORTS RESULTING FROM VESSEL DELAY.—Coal consigned to tidewater was held in the cars at the port awaiting the arrival of a vessel which had been delayed by storms: *Held*, That the delay being due to conditions beyond the control of the rail carrier its demurrage charges might not lawfully be waived. (See rulings 8 and 135.)

May 13, 1912.

359. SHIPMENTS TO COLON, PANAMA.—Colon, although within the geographical limits of the Canal Zone, is governed by and is under the sovereignty of the Republic of Panama. The Commission holds, therefore, that shipments from the United States to that point are entitled to export rates. (See rulings 369 and 468.)

May 17, 1912.

360. ALLOWANCES UNDER SECTION 15.—*Held*, That an allowance purporting to be made under section 15 must be regarded as a concession from the rate unless duly published by the carrier in its tariffs and thus made available to all shippers furnishing a like facility or performing a like service of transportation in connection with their traffic. (See rulings 19, 78, 132, 267, and 292.)

June 3, 1912.

361. FREE TRANSPORTATION TO JOINT EMPLOYEE.—It is desired to move to another station a messenger carried on the pay rolls of an express company who also acts as baggageman for a rail line, 45 per cent of the salary paid him by the former being refunded to it by the latter: *Held*, That the railroad company may not lawfully transport his household goods free or at rates other than those duly established. (See ruling 208*b*, also ruling 157.)

June 4, 1912.

362. ASSIGNMENT OF CLAIM.—In awarding reparation the Commission will recognize an assignment by a consignor to a consignee or by a consignee to a consignor, but will not recognize an assignment to a stranger to the transportation records. (Amending ruling 246. See *Robinson Co. v. American Express Co.*, 38 I. C. C., 735; also *Oden & Elliott v. S. A. L. Ry.*, 37 I. C. C., 345.)

June 8, 1912.

363. PAYMENT BY CARRIER OF TOLLS ON TELEGRAMS.—A carrier's tariffs provide that it will pay for telegrams by consignees to shippers when they contain nothing in addition to the necessary specific instructions to route shipments over its rails: *Held*, That such a rule, when lawfully incorporated in the tariffs of a carrier, is not objectionable. (See rulings 302, 327, 351, and 480.)

364. EXCHANGE OF SERVICES BY TELEGRAPH AND RAILROAD COMPANIES.—See rulings 305 and 491.

365. CARRIERS ACTING AS FORWARDERS OF SHIPMENTS.—*Conference Rulings 98 and 337* do not apply when the consignment is to or in care of the carrier itself for the purpose of being forwarded by that carrier from the point of receipt, at the regular rate, over its own line and connections according to routing instructions, and when no lawful through rate is defeated and no discrimination or other violation of the act results. In no case may the same person act as the agent of the carrier and the shipper. (See *In re Wharfage Facilities at Pensacola, Fla.*, 27 I. C. C., 258; and *Doran & Co. v. N., C. & St. L. Ry.*, 33 I. C. C., 527.)

June 10, 1912.

366. DEMURRAGE OR STORAGE CHARGES RESULTING FROM FAILURE TO GIVE NOTICE AT NAMED ADDRESS.—Upon informal complaint it is *Held*, That when the definite address of a consignee is noted upon the bill of lading it is the duty of the initial and of each succeeding carrier to transmit that address to connections participating in the movement, and the duty of the delivering carrier to send notice of arrival to that address; the carrier at fault in this respect will be held liable for demurrage or storage charges accruing as the result of the failure of the notice to reach the consignee. (See ruling 127, also see Code of National Car Demurrage Rules.)

367. LIQUOR SHIPMENTS NOT DELIVERED.—An express company may not refund the prepaid charges on shipments of liquor which it carried to destination but could not deliver under a local law.

October 7, 1912.

368. CARRIER LOCATED WHOLLY WITHIN A STATE.—Some of the express matter carried by a traction company for an express company between points within a state originates at or is destined to points outside the state. Upon inquiry, *Held*, That the traction line is subject to the act to regulate commerce and must file reports and otherwise comply with its requirements. (See rulings 197 and 418.)

October 8, 1912.

369. COASTWISE TRAFFIC OVER PANAMA RAILROAD.—Shipments moving between ports of the United States by vessel and the Panama Railroad and to ultimate destination by rail are interstate and must take interstate rates for the rail haul from the port to destination. (See rulings 353, 359, and 468.)

370. MISROUTING INVOLVING LOSS OF TRANSIT PRIVILEGE.—Besides stating the route and giving instructions to stop the car in transit to finish loading a shipper also noted a through rate on the bill of lading. This rate did not apply over the indicated route, but was applicable over a route that did not permit the stop specified. *Held*, That the initial carrier, not having advised the shipper of the facts, is liable under *Conference Ruling 286f* for the higher charges that resulted from following the routing instructions. (See ruling 474 amending 286f; also *Jefferson Lumber Co. v. M. & O. R. R. Co.*, 40 I. C. C., 44.)

371. FREE TRANSPORTATION OF EMPLOYEES OF BUREAUS OF CARRIERS.—The following persons may lawfully use free transportation:

(a) Employees of a weighing and inspection bureau who perform and supervise the weighing of cars for the carriers maintaining such bureau are exclusively engaged upon the work of such carriers, and are subject to the direction of their officials, but report to and are paid by the weighing and inspection bureau.

(b) Employees of the American Association of Railroad Superintendents known as chief interchange inspectors, whose duties are to settle disputes among car inspectors at junction points where traffic is interchanged with other lines. (See ruling 448.)

372. FREIGHT MOVED FOR AN EXPRESS COMPANY.—On a shipment consigned to itself under a joint freight rate an express company is not entitled to the benefit of a rail carrier's division to its junction with the line over which the express company operates. (See ruling 209; also *In re Contracts for Free Transportation*, 16 I. C. C., 246.)

373. REPAIR OF CARS ON FOREIGN LINES.—A carrier on whose line a car was damaged made an order on a connecting line, which owned the car, for certain castings to be delivered to it at the junction of the two lines. *Held*, That the former line was a shipper over the line of the owning carrier and must pay the published rate. (See rulings 225 and 333.)

374. CAR FERRY COMPANY SUBJECT TO THE ACT.—An incorporated company operates a car ferry connecting the two interstate rail lines by which it is owned. It separately conducts its own affairs and keeps its own accounts, but has no direct dealings with the public. *Held*, That the ferry company is a common carrier subject to the act, and must file tariffs, keep its accounts, and make reports in accordance with the rules and regulations of the Commission.

375. DESTRUCTION OF RECORDS OF LESSOR COMPANY.—A corporation owning a railroad that it has leased to a carrier for use in interstate traffic is itself subject to the act and must designate an officer to have charge of the destruction of its records.

376. REPARATION CLAIMS ON THE INFORMAL DOCKET.—(Restated in ruling 425.)

October 14, 1912.

377. USE OF COMMISSIONS BY POST-OFFICE INSPECTORS WHEN OFF DUTY.—The use of his commission for transportation by a post-office inspector when returning to duty from a pleasure trip is unlawful. (See ruling 95*f*.)

378. EXPORT BILLS OF LADING.—The rules and regulations of carriers governing bills of lading on export traffic must be published and filed with the Commission.

379. INTEREST UPON OVERCHARGE CLAIMS.—(Re-stated in ruling 489.)

October 15, 1912.

380. REFUND ON UNUSED PORTION OF PASSENGER TICKET.—A passenger, having a round-trip ticket for an interstate journey with stop-over privileges, stopped off at an intermediate point on the going trip and later proceeded to destination. He did not use the return portion of the ticket. The tariff provided for redemption in such cases at the difference between the fare paid and the published rate to the point where the trip was discontinued. There were in effect between the starting point and destination a one-way fare with stop-over privileges, a one-way fare for a continuous passage, and one-way fares for continuous passage to the stop-over point and from that point to destination. The latter combination was lower than the through fare with stop-over.

Held, That the refund was properly made on the basis of the difference between the fare paid and the one-way fare with stop-over privileges.

November 11, 1912.

381. BRIDGE COMPANIES.—A bridge company which does not own or operate any motive power or cars and rents its bridge to an interstate carrier need not file tariffs with the Commission. (See ruling 399.)

382. MILEAGE IN PART PAYMENT FOR TICKET.—A mileage book presented in part payment for a passenger ticket must be accepted for transportation to the farthest station covered by the remaining coupons, the passenger to pay the local fare from that point to destination. (See ruling 81.)

383. MISROUTING SHIPMENT.—The address of the consignee having been omitted, a shipment arriving at destination by a line other than that designated in the routing instructions was sent to a

storage warehouse. The consignee had made inquiry for it of the delivering carrier noted on the bill of lading. The freight rates were the same by either route. *Held*, That the initial carrier is liable for the storage and drayage charges resulting from misrouting the shipment.

384. CHARGES FOR MEALS ON DINING CAR.—The Commission has no jurisdiction over charges made for meals on dining car. (See ruling 28.)

385. HIGHER PASSENGER FARE TO INTERMEDIATE POINT THAN TO MORE DISTANT POINT.—A higher passenger fare was charged to an intermediate point than was in effect to a more distant point over the same route. *Held*, That, the discrimination in its tariff being corrected, the Commission will entertain an application by the carrier to be permitted to make refund on the basis of the lower fare to the more distant point.

386. FREE TRANSPORTATION TO TIE INSPECTOR.—A carrier purchases all its crossties from one source and the contract provides for free transportation to the inspectors of the contractor while traveling to inspect and purchase the ties. *Held*, That free transportation may not lawfully be extended to such inspectors. (See rulings 208*c* and 430.)

387. UNIFORM BILL OF LADING.—The uniform bill of lading contains the following clause:

The value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid), at the place and time of shipment under this bill of lading.

At the time a particular shipment, lost in transit, was made, the market price of a commodity had advanced beyond the price fixed in a contract previously entered into, under which a large quantity had been purchased for future delivery. A construction of the clause being requested, it is the view of the Commission that the provision in the bill of lading contained in the parentheses above quoted does not apply to a shipment made several weeks later than the contract of sale.

December 2, 1912.

388. TRANSPORTATION OF EXPLOSIVES.—The regulations of the Commission touching the transportation by freight and express of explosives and other dangerous articles, together with the specifications for the containers thereof, are amended by extending their application to company materials and supplies of that nature. (See ruling 106.)

389. TARIFFS CONTAINING EXPORT OR IMPORT RATES.—(Restated in ruling 468.)

390. AGENT'S ERROR IN FIXING TIME LIMIT TO PASSENGER TICKET.—Under a tariff providing for an extension of the time limit, when the privilege of stop-over on a through ticket is availed of, the carrier's agent at the stop-over point attached the necessary certificate but erroneously showed an expiration date not sufficiently in advance to permit the holder to reach destination by a continuous trip on a regular train; and in consequence it was necessary for the holder to pay the local fare of a connecting line to destination from the point where the time limit expired.

Held, That the carrier whose agent made the error must bear the entire burden of the refund of the additional fare. (See rulings 167 and 277.)

391. FARE PAID UNDER MISAPPREHENSION OF A PRIVILEGE OFFERED UNDER A THROUGH TICKET.—A passenger, not knowing that a coupon attached to his through ticket, and good for passage between two intermediate points by steamship, might be exchanged for transportation by rail between those points, failed to make the request required under the tariff and purchased a local railroad ticket therefor.

Held, That the carrier may not lawfully refund the amount of the local fare.

December 9, 1912.

392. MISROUTING INVOLVING WRONG TERMINAL DELIVERY.—Rescinded by ruling 509.

December 10, 1912.

393. REFUND OF PASSENGER FARE.—The holder of a round-trip ticket died at destination, all required steps for extending the time limit for the return trip having been previously taken except the affixing of the holder's signature. Had the signature been affixed the ticket would have sufficed for the transportation for the corpse. Upon inquiry, *Held*, That refund may be made by the carrier.

394. JURISDICTION OVER WIRELESS MESSAGES.—The Commission considers that it has jurisdiction over wireless messages from a commercial station in the United States to a ship at sea, whether it be a United States or foreign ship. It does not consider that it has jurisdiction over messages between two American ships at sea. (See ruling 410.)

December 16, 1912.

395. VIOLATIONS OF THE FOURTH SECTION.—Confirming the general principle of an order entered and announced on January 26, 1911, it is *Held*, That when a carrier in obedience to the requirements of the fourth section of the act has, after August 17, 1910, corrected discriminations against intermediate points, it may not lawfully restore such discriminatory rates unless upon formal application the Commission finds justifying circumstances and authorizes a deviation from the long-and-short-haul rule. (See ruling 406; also *Cement Rates From Mason City, Ia.*, 30 I. C. C., 429.)

February 10, 1913.

396. SPECIAL REPARATION ON INFORMAL COMPLAINT. SUPERSEDING RULING 220-c.—Reparation under informal proceedings will be authorized in instances where the tariff rate has been applied, upon the filing of an application by the carrier or carriers which participated in the transportation of the property in question, containing an admission that the rate charged was unreasonable, supported by a statement of the facts substantially showing that the charge demanded for the transportation service performed was excessive, that within a reasonable time a tariff naming the rate upon basis of which adjustment is sought has been published, and that such rate has been made lawfully applicable via the route over which the shipment moved. The Commission's order for refund on account of a reduced rate or changed tariff regulation will require the maintenance of such rate or regulation for at least one year. (Superseding ruling 38; also see rulings 14, 130, and 200a; also *Riverside Mills v. Georgia R. R.*, 20 I. C. C., 424; and *Jefferson Lumber Co. v. M. & O. R. R. Co.*, 40 I. C. C., 44.)

January 6, 1913.

397. REPARATION FOR MISROUTING.—Until the Commission otherwise directs, carriers may adjust claims arising under item (f) of *Conference Ruling 286* without first bringing them to the attention of the Commission; in pursuing this course, however, they must accept full responsibility for the correct application of the rule. (See ruling 474, amending ruling 286f.)

January 13, 1913.

398. FREE TRANSPORTATION OF COLLEGE SUPPLIES.—A college maintained largely by voluntary contributions provides free tuition through scholarships for worthy and needy

pupils, but collects tuition from all students who are able to pay it: *Held*, That under section 22 of the act coal contributed to the institution may not be transported by carriers at other than the published rates. (See ruling 477.)

399. REPORTS BY BRIDGE COMPANIES.—A bridge company which has leased its bridge to an interstate rail line must file the annual, monthly, and other reports required of lessor companies under the accounting rules of the Commission. (See ruling 381.)

400. PASSES FOR TRAIN AUDITORS EMPLOYED BY AN AUDIT COMPANY.—An audit company under contract with several carriers provides train auditors to collect tickets; they do no other work and may be transferred from road to road as the parties to the contract may require. Upon inquiry, *Held*, That a trip pass may be issued by any such carrier for a particular journey over its line by an auditor in connection with its own business, but that annual passes must not be granted.

January 14, 1913.

401. COASTWISE TRAFFIC MOVING ON A THROUGH BILL OF LADING TO INLAND POINT.—A through bill of lading was issued on a shipment routed over a rail-and-water route from an inland point in one state to an inland point in another state. Under instructions from the consignee the shipment was delivered by the coastwise line to a forwarding company at the port of arrival, to be delivered by it to a rail line for carriage to the inland destination as a local state movement. The delivering rail line advanced the charges of the initial and coastwise lines and those of the forwarding company and collected them, together with its own charges, at destination. The sum of the local rates thus applied exceeded the through published rate from point of origin to destination. *Held*, That the through rate should have been assessed on the shipment. (See rulings 66, 155, 201, 354, and 422.)

February 3, 1913.

402. CONCURRENCE BY A LESSOR COMPANY IN RATES PUBLISHED BY A LESSEE.—When the lessor company participates in the service with its engines and crews and is compensated therefor on a percentage division it should concur in and be shown as a party to the tariffs of the lessee naming passenger fares and freight rates over the lessor's rails. (See ruling 341.)

February 4, 1913.

403. STORAGE CHARGES ACCRUING DURING RECONSTRUCTION OF A LEASED WAREHOUSE.—A terminal company may not cancel charges that have accrued, under published rates, on shipments landed and stored on its wharf with its consent pending the repair of a warehouse which it had leased to the shipper and which had been destroyed during a storm.

March 10, 1913.

404. STORAGE CHARGES ACCRUING BECAUSE OF WEATHER CONDITIONS.—Because of inclement weather and impassable roads shippers failed to remove less-than-carload freight within the free time specified in the tariffs and storage charges resulted. Upon inquiry: *Held*, That the same rule may be applied to storage charges as to demurrage charges if so provided in the tariff. (See rulings 242 and 313.) See Code of National Car Demurrage Rules.

405. DEMURRAGE RULES APPLICABLE TO SHIPMENTS.—Before certain shipments were removed by the consignee at destination amended demurrage rules became effective providing charges after certain free time had elapsed: *Held*, That the rules in effect at the time the shipments arrived at the demurrage point must control. (See ruling 473.)

April 7, 1913.

406. VIOLATION OF THE FOURTH SECTION.—A violation of the long-and-short-haul clause, having been canceled out of its tariffs, may not lawfully be restored by the carrier without the special authority of the Commission, even though the violation was in existence when section 4 of the act was amended on June 18, 1910. (See ruling 395.)

407. COMMISSIONS PAID BY TELEGRAPH COMPANIES.—It is unlawful for a telegraph company to pay to the person, firm, or company in whose building a telegraph office is located any commission on the messages received by or transmitted for that establishment.

April 8, 1913.

408. NOTICES OF ORAL ARGUMENT. (See current Rules of Practice.)

409. APPLICATION OF AVERAGE AGREEMENT UNDER UNIFORM DEMURRAGE RULES.—No average agreement made under the uniform demurrage rules may properly combine in one

account the cars of more than one consignee; each average agreement must cover the business of one consignee only. Demurrage agreements may not lawfully be made with draymen or with public elevators serving various consignees.

This rule is not intended to prohibit the application of the average agreement at a public elevator or warehouse so far as it applies to cars consigned to the elevator or warehouse company. (See ruling 463; also see Code of National Car Demurrage Rules.)

410. EXCHANGE OF PASSES WITH WIRELESS TELEGRAPH COMPANIES.—It is the view of the Commission that passes and franks may lawfully be exchanged between wireless telegraph companies and other common carriers subject to the act. (See ruling 394.)

411. LABOR AGENT MAY NOT LAWFULLY RECEIVE PASSES.—The proprietor of a labor agency, who furnishes laborers to railway companies and contractors, is not an employee of the carriers within the meaning of the first section of the act, and passes may not lawfully be issued to him.

412. PASSES TO AN ATTORNEY ENGAGED IN THE WORK OF A CARRIER.—A carrier arranged with a lawyer to give preferred attention to its railroad business at a monthly salary, the attorney being permitted also to engage in general practice. Upon inquiry: *Held*, That time passes may not lawfully be issued in such a case unless substantially all the attorney's time is devoted to the work of the carrier. (See rulings 95*a* and 208*a*.)

413. SUPPLIES SOLD TO EMPLOYEES OF CARRIER BY A CONTRACTOR NOT TO BE TRANSPORTED FREE.—An employment agent is under contract with an interstate carrier to furnish it with track laborers and to keep them supplied, even at remote points along its line, with provisions, foodstuffs, clothing, etc., which they purchase of him from time to time with written orders upon the carrier against their pay. The contractor does no business with the general public. *Held*, That the supplies may not lawfully be transported free. (See ruling 208*c*. Compare ruling 469.)

414. PASSES TO WITNESSES IN CRIMINAL CASES.—Upon inquiry: *Held*, That, in case of a criminal prosecution for theft of property from a carrier subject to the act, the carrier may lawfully issue to witnesses on the side of the state interstate passes to and from the place of trial, even though the witnesses are not employees of that or any other common carrier. (See ruling 319.)

April 14, 1913.

415. EXCHANGE OF BILLS OF LADING.—The exchange at an intermediate point of one bill of lading for another, showing a different consignor or consignee or a different destination, is unlawful except in connection with a reconsignment or diversion authorized in the tariff. (See ruling 227.)

May 6, 1913.

416. CONSIGNEE RELIEVED OF DEMURRAGE CHARGES THAT ACCRUED AT POINT OF ORIGIN.—A consignee received a carload shipment, paid the freight charges thereon as agent for the shipper, sold the goods, and remitted the proceeds to the shipper after first deducting the freight charges. About six months afterwards a bill was presented to the consignee for demurrage charges which accrued at the shipping point. The demurrage charges were not shown as advance charges, but a clear bill of lading was issued by the carrier. Upon inquiry: *Held*, That the issuance of a clear bill of lading by the carrier and its failure to bill the demurrage as advance charges relieves the consignee from the obligation to pay the demurrage charges, and the initial carrier must look elsewhere for their payment.

417. FREE TRANSPORTATION FOR TRAINED NURSE IN FAMILY OF EMPLOYEE.—Upon inquiry whether a trained nurse is entitled to free transportation, under section 1 of the act, when in attendance upon, and traveling with, an employee of a carrier, who is himself entitled to free transportation, or with one of his family, the Commission affirms its definition of the term "families" as contained in *Conference Ruling 95c* and, conforming to its uniform practice with respect to such matters, declines to determine whether particular individuals are eligible to receive free transportation.

May 12, 1913.

418. INTERSTATE CARRIER DEFINED.—An electric street railway, with a large passenger traffic and a substantial intrastate freight movement, derives a very small percentage of its revenue from shipments moving between interstate points. It asserts that its entire freight service, both state and interstate, is performed as a matter of accommodation to patrons along its line.

Upon inquiry: *Held*, That if a company engages in interstate commerce at all it thereby becomes subject to the act and is amenable to its provisions with respect to making statistical, annual, and other reports to the Commission and must file tariffs. (See rulings 197 and 368.)

419. REPARATION ON THE BASIS OF STATE RATES.—

Upon further consideration *Conference Ruling 251* is modified as follows:

The Commission will not recognize as a basis for reparation any rate that is not on file with it, except that in misrouting cases a lower state rate not on file here may be accepted as the basis for reparation when officially verified by local authorities. (See ruling 93; also *Lathrop Lumber Co. v. A. G. S. R. R.*, 27 I. C. C. 250, and *McCault-Dinsmore Co. v. G. N. Ry.*, 41 I. C. C., 178.)

June 3, 1913.

420. JURISDICTION OVER TELEPHONE COMPANIES IN PORTO RICO.—It is the view of the Commission that it has no jurisdiction over the service and rates of telephone companies the lines of which are wholly within Porto Rico.

421. A CARRIER MAY NOT LEASE ITS ELEVATORS AT A NOMINAL RENTAL.—An interstate carrier desires to lease to a grain dealer at a nominal rental an elevator which has not been in use for some time, and which the carrier is anxious to dispose of because the operation of the elevator would attract business to the road. Upon inquiry: *Held*, That such a transaction would be illegal. (See rulings 94 and 325.)

June 5, 1913.

422. JURISDICTION OVER TRAFFIC MOVING ON THROUGH BILL OF LADING TO HAWAII.—A steamship company filed a proportional tariff with the Commission providing export commodity rates from a port in the United States to a port in the territory of Hawaii. The traffic was covered by through bills of lading from inland points in the United States to the port of transshipment and moved under tariffs filed with the Commission. Upon inquiry: *Held*, that under the Panama Canal act the Commission has jurisdiction over shipments moving under the steamship company's proportional tariff. (See rulings 66, 155, 201, 354, and 401.)

423. COMBINATION RATE MAY NOT BE APPLIED UNTIL JOINT THROUGH RATE IS CANCELED.—A mixed carload shipment moved under a joint mixed carload rate. There was also in effect at the time of the shipment a combination carload rate on the heavier weighted commodity in the mixture and a through less-than-carload rate on the lighter weighted commodity, which made a lower charge than that based on the joint mixed carload

rate. The joint mixed carload rate had not been canceled. Upon inquiry: *Held*, That a refund to the basis of the lower combination could not lawfully be made.

424. ABSORPTION OF SWITCHING CHARGES OF AN INDUSTRY.—An industry operates its own rails as a plant facility to a connection with the plant rails of another industrial concern, the latter rails, on the other side of the plant, connecting with the rails of an interstate carrier. The trunk line desires to extend its service to the rails of the first industry. The intermediate industry refuses trackage rights to the carrier but will continue itself to switch cars to it, and will accept compensation therefor from the carrier instead of from the other industry, provided this course does not subject it to the act as a common carrier.

It is the view of the Commission that the service performed by the intermediate industry is a service for the shipper and not for the carrier and that the carrier may not lawfully absorb the switching charge of the intermediate industry.

425. REPARATION CLAIMS ON THE INFORMAL DOCKET.—Upon further consideration *Conference Ruling 376* is amended to read as follows:

In special docket cases no order as to the rate for the future shall be entered where the joint rate in effect at the time of shipment exceeded the aggregate of the intermediate rates and the rates have been subsequently changed in such a manner as that at the time the order of the Commission is entered the through rate does not exceed the sum of the intermediate rates, or in cases where at the time the shipment moved the rate for a short haul was greater than the rate for a longer haul over the same line or route, in the same direction, the shorter being included within the longer distance and the rates have been subsequently changed in such a manner that at the time the order of the Commission is entered the rate for the shorter distance does not exceed the rate for the longer distance. (Modifying ruling 200a.)

June 9, 1913.

426. TIME PASSES TO LOCAL ATTORNEYS, SURGEONS, ETC.—The Commission adheres to the ruling many times repeated that it is unlawful for an interstate carrier to issue time passes to local attorneys, surgeons, and others, who do not devote substantially all their time to the work or business of the carrier. The principle of *Conference Ruling 208-a* is reaffirmed. (See ruling 449.)

427. INDUSTRIAL SWITCHING TRACKS.—Restated in ruling 512.

428. PAYMENT BY RAIL CARRIERS OF ADVANCE CHARGES ON IMPORT TRAFFIC.—A rail carrier may not advance charges to an ocean carrier on import traffic except under a proper provision therefor in its tariffs. When such advance charges are made the freight bill of the rail line must show in separate items the charges so advanced and the charges of the inland carrier or carriers; it must also show the tariff rate or rates of the inland carrier or carriers. The name of the ocean carrier to which the charges are advanced must also be shown.

In order that carriers may have time in which to adjust their tariffs in conformity herewith this ruling will become effective on August 15, 1913. (See rulings 62 and 444; also *Express Rates, Practices, Accounts, and Revenues*, U. R. Op. A-980.)

June 16, 1913.

429. FREE OR REDUCED RATE TRANSPORTATION TO FAMILIES AND HOUSEHOLD GOODS OF POSTAL CLERKS.—The law does not authorize free or reduced rate transportation for the families and household goods of postal clerks whose headquarters were changed for the convenience of a carrier.

430. TIE INSPECTORS NOT ENTITLED TO FREE TRANSPORTATION.—A man who has a contract to furnish ties to an interstate carrier may not lawfully have free transportation as a tie inspector. (See ruling 386.)

431. REDUCED RATE TRANSPORTATION FOR CONVICTS UNLAWFUL.—It is the view of the Commission that reduced interstate fares may not be granted by carriers for transporting to the penitentiary persons convicted in the United States courts for violation of Federal laws.

June 18, 1913.

432. WAIVER OF UNDERCHARGES.—(Canceled by ruling 472.)

June 23, 1913.

433. SHIPPER LIABLE FOR HIS ERROR IN MARKING L. C. L. SHIPMENTS.—Besides being expressly so provided in the rules of all freight classifications, it is on broad general grounds the duty of a shipper correctly to mark packages of less-than-carload freight intended for transportation, and when so marked the carrier is held to a strict responsibility for their safe delivery at destination.

A package of merchandise was addressed by a shipper to Lake City, Fla., instead of Lake City, S. C. *Held*, That the shipper making the error must bear the burden of the resulting freight charges, and the fact that the correct address was noted on the bill of lading is not material. *Parlin & Orendorff Plow Co. v. United States Express Co.*, 26 I. C. C., 561, reaffirmed. (See rulings 237 and 248; also *American Agricultural Chemical Co. v. B. & O. R. R. Co.*, 28 I. C. C., 401.)

July 23, 1913.

434. PASSES TO OFFICIALS OF RAILROADS IN ADJACENT FOREIGN COUNTRIES.—Free interstate transportation may lawfully be issued to officials of any railroad in an adjacent foreign country which has filed with this Commission joint tariffs and concurrences in connection with interstate carriers in the United States without reservation as to the Commission's jurisdiction. (See ruling 475.)

July 24, 1913.

435. DESTRUCTION OF RECORDS.—It is the view of the Commission that all maps, profiles, plans, specifications, estimates of work, records of engineering studies, field books, and other records pertaining to the physical property of carriers come within the prohibition of destruction contained in section 20 of the act, and as such shall not be destroyed or otherwise disposed of unless their destruction be specifically authorized in the orders of the Commission in the matter of the destruction of records. (See orders of the Commission governing the destruction of records.)

July 25, 1913.

436. PASSES TO DIRECTORS OF A CARRIER IN THE HANDS OF RECEIVERS.—When the management of a railroad company has been placed in the hands of receivers and the officers and directors of the railroad company are not employed by the receivers: *Held*, That such officers and directors are not entitled to free transportation. (See ruling 165.)

437. EMBARGOES ON ACCOUNT OF REVOLUTION IN ADJACENT FOREIGN COUNTRIES.—Embargoes against the receipt of freight have been established by Mexican railroads at different times on account of revolutionary troubles in Mexico. Upon inquiry: *Held*, That interstate carriers in the United States under the special circumstances will be permitted to file with the Commission the proper application for authority to establish on short notice tariffs naming the conditions and rates under which they will return

or otherwise dispose of property billed to points in Mexico, but which they have been unable to deliver because of the revolutionary conditions in that country. It is understood that the tariffs will arrange that those carriers which participated in the haul within the United States will prorate the expenses of *per diem*, storage, loading, and unloading of the shipments or of their return to the points of origin.

438. REFUND OF PASSENGER FARES.—A ticket was purchased for an interstate journey during a time of high water, the agent stating that through trains were being operated without difficulty or delay. Upon arrival of the train at an intermediate point the conductor informed the passenger that the train would be abandoned on account of high water. The passenger then purchased a ticket back to the point of origin. Upon inquiry: *Held*, That a refund of all the fares paid on the trip may be made, provided the railroad company publishes a general tariff rule providing a refund of fares to all passengers affected by such circumstances and conditions.

439. COMPANY MATERIAL HAULED OVER ANOTHER LINE UNDER TRACKAGE RIGHTS.—A carrier having trackage rights permitting it to haul general traffic may haul its own company material over the leased track as over its own rails. In the case passed upon in *Conference Ruling 153* there was no arrangement for handling commercial freight over the leased track.

440. DESTRUCTION OF RECORDS.—An express company has retired from business and asks permission to destroy certain of its records: *Held*, That in the absence of special permission by the Commission the records must not be destroyed except under the rules of the Commission.

441. TARIFFS COVERING ABSORPTION OF DRAYAGE CHARGES.—The absorption of drayage charges being under consideration, the Commission holds:

(a) Where there is an additional transfer or drayage charge in connection with a through shipment, the carriers' tariffs must specify what that charge shall be.

(b) If such drayage or transfer charge is absorbed, in whole or in part, by a carrier, the tariffs must show the amount of such transfer charge that will be absorbed.

(c) A drayage firm is not a proper party to a joint tariff nor is it a carrier under the provisions of our act; therefore, no tariffs can properly be filed by it.

(d) There is no provision in the law which requires, and the Commission has no authority to require, a carrier to confine such drayage to one drayman or one firm of draymen.

(e) The responsibility in case of loss and damage while a shipment is in charge of a truckman to whom it has been committed by the carrier is a question for the carrier to resolve, and is not for our determination.

442. FEEDING AND GRAZING IN TRANSIT.—*Conference Ruling 17* is amended to read as follows:

In connection with the published privilege of feeding and grazing in transit, or where carriers are required to feed live stock in transit, under the provision of an act approved June 29, 1906, commonly called the 28-hour law, carriers may lawfully provide in their tariffs that they will furnish feed at current market prices and bill the cost thereof, together with an addition not exceeding 10 per cent of such cost to cover the value of their services, as advance charges.

October 7, 1913.

443. THROUGH RATE ONLY LAWFUL RATE FOR THROUGH SHIPMENTS.—Upon inquiry as to whether a through distance tariff rate should be applied in cases where a combination rate, made up of a rate to an intermediate point and a distance tariff rate beyond, makes a lower through charge: *Held*, That the through rate is the only lawful rate. (See ruling 220g.)

444. ADVANCES OF CUSTOMHOUSE BROKERAGE FEES.—Rail carriers may properly advance customhouse brokerage fees and import duties and charges only when proper provision therefor is made in their published tariffs. (See rulings 7, 221, and 300.)

445. CHECKING SAMPLE BAGGAGE.—When carriers' tariffs provide for checking sample baggage and define sample baggage as that which is carried for display and not for distribution or sale, it is not lawful to distribute or sell articles contained in such baggage at any point to which it has been so checked. Such articles may lawfully be distributed or sold at any point to which they are shipped by mail, freight, or express, and they may lawfully be so shipped from a point to which they have been checked as baggage for use as samples or for display. (See ruling 455; see also *Jewelers' Protective Union v. P. R. R.*, 36 I. C. C., 73.)

November 4, 1913.

446. PASSES TO STATION AGENT WHO DEVOTES ONLY PART TIME TO RAILROAD DUTIES.—Upon inquiry: *Held*, That a station agent employed by a railroad company may not lawfully receive free transportation when he employs other persons to perform his duties so that he may devote the greater part of his time to other business. (See ruling 208*a*.)

447. APPLICATION OF FOURTH SECTION.—The provisions of the fourth section apply where the point of origin is in an adjacent foreign country and the intermediate point and more distant point of destination are in the United States, or where the point of origin and the intermediate point are in the United States and the more distant point of destination is in an adjacent foreign country. (See ruling 318.)

448. FREE TRANSPORTATION TO MEMBERS OF FAMILIES OF EMPLOYEES OF BUREAUS OF CARRIERS.—Upon inquiry it was agreed that *Conference Ruling 371*, holding that employees of bureaus maintained by common carriers may lawfully use free transportation, must necessarily be understood as meaning that members of their families may also lawfully use free passes.

December 1, 1913.

449. FREE TRANSPORTATION OF VETERINARY SURGEONS.—A veterinary surgeon not carried regularly on the pay rolls of a carrier but engaged by the carrier to examine live stock offered for shipment or to care for injured stock, may not be furnished with a term pass, but may lawfully use a trip pass over the lines of a carrier when performing a bona fide service for it. (See rulings 208*a*, 208*b*, and 426.)

December 4, 1913.

450. TARIFFS OF A RAILROAD SYSTEM—THE TRADE NAME.—The tariffs and concurrences of a railroad system must show, in addition to its trade name, the corporate title or titles of the various lines of which the system is composed.

January 6, 1914.

451. DEMURRAGE CHARGES ON DAMAGED SHIPMENTS.—The uncertainty of a consignee as to whether or not he will accept a damaged shipment does not justify the carrier in waiving the demurrage charges accruing on the shipment pending his decision.

452. FREE TRANSPORTATION OF PROPERTY FOR TOWNSHIPS AND COUNTIES.—Upon inquiry: *Held*, That townships and counties are municipalities within the meaning of section 22 of the act to regulate commerce and carriers may lawfully transport their property free or at reduced rates. (See rulings 33, 36, 244, and 297.)

453. CHANGE OF ROUTE BY CONSIGNEE.—Rescinded by ruling 502.

January 12, 1914.

454. FREE TRANSPORTATION FOR CUSTOMS BROKER.—A customs broker employed by a carrier on a commission basis and not paid a regular salary and who does not devote substantially all his time to the service of the company is not entitled to use free transportation. (See ruling 208a.)

February 3, 1914.

455. SALE OF PROPERTY TRANSPORTED AS BAGGAGE.—Upon inquiry as to whether or not it is unlawful for a person to sell property transported as baggage and upon which excess baggage charges on the entire weight are paid: *Held*, That if the carrier's tariffs make provision for the transportation of such property at excess baggage rates on the entire weight it would not be in violation of the law to dispose of the property by sale or otherwise. (See ruling 445; also *Jewelers' Protective Union v. P. R. R.*, 36 I. C. C., 73.)

March 2, 1914.

456. WRITTEN NOTICE TO CARRIER CONSTITUTES PRESENTATION OF CLAIM—Restated in ruling 510.

March 3, 1914.

457. WRITTEN STATEMENTS OF RATES FURNISHED BY CARRIERS.—It is the understanding of the Commission that under section 6 of the act carriers are required to make written statements as to rates only in relation to shipments about to be made or shipments affected by contracts about to be entered into, and that the provisions of that section do not require carriers to expend their time and labor in making such statements upon demands therefor by individuals wishing to issue books or notices of rates, or for other purely speculative purposes.

March 16, 1914.

458. LOSS OF RETURN PORTION OF PASSENGER-FARE TICKET BY AGENT OF CARRIER.—The return portion of a passenger-fare ticket was lost by the agent of a carrier, and the carrier was obliged to furnish the traveler another ticket upon which to complete the return journey. Upon inquiry: *Held*, That the carrier at fault must assume the entire loss and pay to each carrier interested its proportion of the value of ticket furnished in lieu of the return portion of ticket lost. If, however, the return portion of ticket is later found, the carriers receiving settlement for the ticket furnished in lieu thereof may properly return the amounts received in settlement of the additional ticket furnished.

April 13, 1914.

459. PASSES FOR SUPERINTENDENT OF MAIL SERVICE OF THE CANADIAN GOVERNMENT.—It is the view of the Commission that free annual transportation may not lawfully be issued to a superintendent of mail service of the Canadian government.

460. TELEGRAMS AND CABLEGRAMS.—The practice by telegraph and cable companies of returning to patrons the original telegrams or cablegrams in support of their bills is unlawful. Such documents must be retained in conformity with the regulations of the Commission governing the destruction of records of telephone, telegraph, and cable companies.

April 14, 1914.

461. WATER CARRIERS CONTROLLED BY OTHER COMMON CARRIERS.—Section 5 of the act as amended by the Panama Canal act prohibits common carriers subject to the act to have, after July 1, 1914, any interest, directly or indirectly, in any common carrier by water, or any vessel carrying freight or passengers, with which said carrier does or may compete for traffic.

The manifest purpose of this law is to bring about discontinuance of common ownership or control of water carriers except in those instances in which, after investigation and hearing, it is found that such operation is in the interest of the public or of advantage to the convenience and commerce of the people, and neither excludes, prevents, nor reduces competition on the route by water. The act does not in specific words authorize the continuance of such common ownership or control beyond July 1, 1914, pending the decision of the Commission on application relative thereto; but it is provided that

any application filed before July 1, 1914, may be considered and granted thereafter. It is not conceivable that the Congress intended that the service should be withdrawn from the public on July 1, 1914, if for good and sufficient reasons it had been impossible for the Commission to determine the questions presented in the application before that date. Although the language employed is different, it seems that the legislative intent was similar to that expressed in the amended fourth section of the act and in the safety appliance acts.

The Commission therefore interprets the amendment to section 5 of the act as contemplating and authorizing a continuance of any existing common ownership or control after July 1, 1914, between rail and other carriers and water carriers not traversing the Panama Canal until such time as the Commission has passed upon the application relative thereto, provided such application is filed with the Commission prior to July 1, 1914.

April 25, 1914.

462. CARRIER MUST INVESTIGATE BEFORE PAYING CLAIMS.—Upon further consideration *Conference Ruling 15* is modified as follows:

A carrier can not shield itself from responsibility in paying a claim by accepting the authority of a connecting line to pay it, but must ascertain the lawfulness of the claim and allow it or not upon the basis of its own investigation. This is not to be understood, however, as requiring each carrier interested in the claim to make an independent investigation. The principle of direct investigation embodied in the rules of the freight claim association, whereby the carrier against which a claim is presented undertakes to make the investigation for itself and for the other carriers concerned in the joint movement out of which the claim arises, is approved by the Commission as a means of expediting the adjustment of claims. In all cases, however, the investigation so made must be thorough and must disclose a lawful basis for payment before the claim is adjusted. (See ruling 236; also *Charleston & W. C. Ry. Co. v. Varnville Co.*, 237 U. S., 597.)

May 19, 1914.

463. APPLICATION OF THE AVERAGE AGREEMENT UNDER UNIFORM DEMURRAGE RULES.—A storage warehouse company which is specifically designated as the consignee of carloads of miscellaneous freight, the property of others, and which company is responsible for the unloading and for the detention of cars so received, may be made the subject of the average demurrage rule. Cars arriving otherwise consigned and afterwards ordered

to the warehouse for storage may not be included under the average agreement with the warehouse company. (See ruling 409.)

May 28, 1914.

464. INTEREST UPON OVERCHARGE CLAIMS.—Restated in ruling 489.

July 11, 1914.

465. ORDERS ISSUED ABROAD FOR DOMESTIC PASSENGER TICKETS.—Under an arrangement with the rail carriers trans-Atlantic steamship lines in selling a ticket for ocean passage from a foreign port will also sell an order upon a rail line for transportation from the port of arrival to an inland point, based on the fare in force at the time the order is issued. Upon inquiry as to whether a carrier may honor such an order when the fare has been changed between the date of its issue and the date of its presentation: *Held*, That the order may be honored on the basis of the fare in effect at the time it was sold, provided the rail carrier has published an appropriate tariff provision for the acceptance of such orders at the fares in effect when they were issued.

July 17, 1914.

466. PASSES FOR OFFICERS AND EMPLOYEES OF TAP LINES.—Under the decision of the Supreme Court of the United States in *The Tap Line Cases*, 234 U. S., 1, it is the view of the Commission that the law does not prohibit the use of interstate free passes by the officers and employees of common-carrier tap lines who devote substantially all their time to the service of the tap line and where, by the use of such free passes, no unlawful discriminations are effected. (See ruling 208a and *The Tap Line Case*, 31 I. C. C., 494.)

July 29, 1914.

467. EXCURSION TICKET ISSUED ON DATE NOT AUTHORIZED BY TARIFF.—A station agent sold a colonist ticket at a reduced fare before the commencement of the period designated in the tariff. Upon inquiry: *Held*, That the selling carrier is responsible for the error and in settlement with its connections must allow them their usual divisions of the fare lawfully in effect on the date of sale.

December 23, 1914.

468. EXPORT AND IMPORT RATES—CONFERENCE RULING 389 RESTATED.—In order to avoid controversies and

questions: *Held*, That tariffs hereafter issued containing rates applicable to export or import traffic shall specify, by inclusion or exclusion, the countries to or from which such rates are applicable, whether such countries are or are not adjacent to the United States.

In the interest of clearness the tariffs should also specify whether or not shipments to or from Cuba, the Philippine Islands, Porto Rico, the Hawaiian Islands, or the Canal Zone are included. (See rulings 353, 359, and 369.)

469. FREE TRANSPORTATION OF SUPPLIES FOR LABORERS.—Upon inquiry as to whether or not a carrier may transport without charge food or other supplies for the use of laborers employed on its line: *Held*, That such shipments may not be carried free except when shipped by an agent of the carrier acting for it and for whose actions the carrier assumes and accepts responsibility. (Compare ruling 413.)

December 24, 1914.

470. SPECIAL RATES ON SHIPMENTS IN FOREIGN CARS.—A carrier may not by tariff limit the application of certain proportional rates to shipments in cars of other carriers.

January 19, 1915.

471. CHANGES IN RECONSIGNMENT CHARGES.—At the time a shipment commenced to move from the point of origin the tariff provided four days free time for reconsignment, but before the shipment reached the reconsigning point the time had been lawfully reduced to one day: *Held*, That the tariff in effect when the shipment was made applied.

May 3, 1915.

472. WAIVER OF UNDERCHARGES.—On and after August 1, 1915, the Commission will not consider on the informal docket any application for authority to waive collection of undercharges in connection with shipments delivered subsequent to July 31, 1915. *Conference Rulings 258 and 432* are hereby rescinded as of August 1, 1915.

May 24, 1915.

473. DEMURRAGE AND STORAGE RULES.—Upon inquiry and to remove the confusion that exists among carriers and shippers it is *Held*, That demurrage and storage in transit are controlled by the tariff in effect when the initial movement begins; that demurrage on outbound shipments is controlled by the tariff in effect when the

car is actually set for loading; that demurrage and track storage at destination are controlled by the tariff in effect when the car is actually or constructively set for unloading; and that offtrack storage by a carrier at destination, in its warehouse or otherwise, is controlled by the tariff in effect at the time such storage begins. (See ruling 405.)

May 25, 1915.

474. ADJUSTMENT OF CLAIMS FOR DAMAGES RESULTING FROM MISROUTING.—*Conference Rulings 286d and 286f* are amended to read as follows:

(a) It is the duty of a carrier to make delivery in accordance with routing directions. Where such routing instructions have not been followed and delivery is tendered at another terminal than that designated, it remains the duty of the delivering carrier to make delivery at the terminal designated in routing instructions, either by a switch movement or by carting. In either event the additional expense involved in making such delivery must be borne entirely by the carrier responsible for the misrouting and the reimbursement thereof to the delivering carrier may be made by the carrier at fault without a specific order of the Commission. (See ruling 214d.)

(b) Restated in ruling 509.

(c) The obligation lawfully rests upon the carrier's agent to refrain from executing a bill of lading which contains provisions that can not lawfully be complied with, or provisions which are contradictory and therefore impossible of execution. When, therefore, the rate and the route are both given by the shipper in the shipping instructions and the rate given does not apply via the route designated it is the duty of the carrier's agent to ascertain from the shipper whether the rate or the route given in the shipping instructions shall be followed. The carrier will be held responsible for any damages which may result from the failure of its agent to follow this course.

If, however, the agent of the carrier, after exercising reasonable diligence, is unable to obtain more definite instructions as to routing, the goods should be sent via the route specified in the bill of lading. (Cancels rulings 159, 186, 192, 214i, and 231; see rulings 243, 370, and 397. See *Gibson Fruit Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 645; *Ludowici-Celadon Co. v. M. P. Ry. Co.*, 22 I. C. C., 589; *American Agricultural Chemical Co. v. B. & A. R. R. Co.*, 28 I. C. C., 400; *Goldfield Cases*, 34 I. C. C., 378; *Texarkana Pipe Works v. B., S. L. & Wn. Ry.*, 38 I. C. C., 341; *Chapin & Co. v. C., I. & L. Ry. Co.*, 38 I. C. C., 613; *Jefferson Lumber Co. v. M. & O. R. R. Co.*, 40 I. C. C., 44; *Laclede-Christy Clay Products Co. v. M. P. Ry. Co.*, U. R. Op. A-780; and *B. McCracken & Son v. B. & O. R. R. Co.*, U. R. Op. 2199.)

475. PASSES TO OFFICERS AND EMPLOYEES OF OCEAN AND FOREIGN COMMON CARRIERS.—In view of the decision in *United States v. Erie Railroad*, 236 U. S., 259, so much of *Conference Rulings 95a, 95g, and 196* as pertains to passes to officers and employees of ocean common carriers and of rail common carriers in foreign countries not adjacent is withdrawn. (See ruling 434.)

June 2, 1915.

476. PASSES TO THE FAMILY OF A DECEASED PENSIONED EMPLOYEE.—Upon inquiry as to whether or not common carriers may grant free transportation to the members of the family of a deceased pensioned employee: *Held*, That with the exception of widows during widowhood and minor children during minority, the members of the family of a deceased pensioned employee may not lawfully use free passes. (See rulings 103, 173, and 193.)

June 14, 1915.

477. FREE TRANSPORTATION OF CAR WITH EXHIBITS FOR STATE AGRICULTURAL COLLEGE.—A state college uses a car containing live stock and agricultural products in giving free educational lectures and demonstrations to farmers in different parts of the state. Upon inquiry: *Held*, That if the college is sustained by the state and if the arrangements are made with the proper and responsible officers of the state such car and contents and the necessary agents employed in connection therewith may lawfully be moved by carrier without charge or at reduced rates. (See ruling 398.)

July 8, 1915.

478. PASSES TO WATCH AND TIME INSPECTORS.—Upon inquiry: *Held*, That free passes may not lawfully be used by watch and time inspectors who, while engaged in the performance of a service for a carrier, pursue other business or sell or solicit the sale of merchandise of any character either to the employees of the carrier or to the general public. (See ruling 208b.)

July 22, 1915.

479. PASSES TO EMPLOYEES OF PRIVATE CAR LINES.—A company owns and leases cars to railroad companies on a mileage basis and ices and re-ices such cars at various points on the carriers' lines at the expense of the carrier. Inasmuch as the furnishing of cars and the icing of cars are duties imposed upon carriers under section 1 of the act, and following the principle laid down in *Conference Ruling 208b*, it is *Held*, That passes may lawfully be

issued to the officers and employees of the car company when traveling solely for the purpose of furnishing or icing cars for shipments over the carrier's own lines, but may not lawfully be issued to or used by the officers of the car company when not traveling in the performance of a *bona fide* service for the carrier.

July 22, 1915.

480. TELEPHONE MESSAGES RELATING TO SHIPMENTS.—Upon inquiry: *Held*, That *Conference Rulings 302, 327, 351, and 363*, regarding the exchange of messages between carriers and shippers, relate to telephone messages as well as to telegrams.

July 23, 1915.

481. ERROR IN THE ISSUANCE OF PASSENGER TICKETS.—Restated in ruling 487.

July 26, 1915.

482. ROUTING OF SHIPMENTS BY CONSIGNEES.—Rescinded by ruling 502.

October 4, 1915.

483. COMMODITY RATE BASED UPON A MAXIMUM CARLOAD WEIGHT.—Under a tariff naming a commodity rate per car, not exceeding a specified maximum weight, and also a class rate with a minimum carload weight: *Held*, That charges should be assessed upon the basis of the commodity rate, any excess weight to be charged proportionately; but the carrier may refuse to receive in one car a shipment weighing more than the maximum load prescribed for that car. (See ruling 84, and also Rule 7 of Tariff Circular 18-A.)

484. PASSES TO EMPLOYEES OF PRIVATE CAR LINES.—*Conference Ruling 479* has no application to the officers and employees of a private car company, such as a fruit express company, that owns cars and leases them to a common carrier railroad, all its capital stock being owned by the lessee carrier and its employees being treated by the owning road in all respects as its own employees.

November 1, 1915.

485. PASSES TO FAMILIES OF SECRETARIES OF RAILROAD YOUNG MEN'S CHRISTIAN ASSOCIATIONS.—Members of the family of a secretary of a Railroad Young Men's Christian Association are not entitled to use free passes. (See ruling 208*d*.)

December 22, 1915.

486. DIVISIONS OF JOINT RATES ON RAILWAY FUEL MUST BE FILED WITH THE COMMISSION.—For the purpose of giving the matter wider publicity, this means is adopted of directing attention to the Commission's report and order in *Filing of Divisions of Joint Rates Applicable to Railway Fuel*, 37 I. C. C., 265, and to its supplemental report and order in the same proceeding, 38 I. C. C., 169. By these orders *Conference Ruling 209* was modified and carriers were required to file with the Commission sheets or statements showing the divisions of all joint rates on railway fuel; and to file all changes and amendments to such sheets or statements; and to file all new sheets or statements which in any wise affect or determine the division of joint rates on railway fuel. (See ruling 324.)

December 23, 1915.

487. ERROR IN ISSUANCE OF PASSENGER TICKETS.—*Conference Ruling 481* revised. The contract portion and some of the coupons of a half-fare or lower class ticket were properly punched by the agent of an initial carrier, but the remaining coupons were overlooked. Upon inquiry, *Held*, That while adhering, under *Conference Ruling 277*, to the principle that the initial carrier in such cases must bear the full burden of the mistake of its agent and settle with its connecting lines on the basis of the class of ticket as honored by them, nevertheless, when the conductor of a connecting line honoring the unmarked or unpunched coupons indicates thereon that the contract portion of the ticket was properly marked or punched and that the holder was actually accorded half-fare or lower class transportation, such line may accept its proportion of the fare applicable to the transportation so furnished.

January 10, 1916.

488. RATES BETWEEN POINTS IN THE UNITED STATES AND ADJACENT FOREIGN COUNTRIES.—In the absence of a published through rate between a point in the United States and a point in an adjacent foreign country, the published through rate between the border gateway and the domestic point should be applied in constructing the total rate. In the absence of a published through rate between the border gateway and the domestic point the lowest combination of legal rates should be applied. (See ruling 220g.)

February 18, 1916.

489. INTEREST UPON OVERCHARGE CLAIMS.—*Conference Ruling 464* amended and restated.

Interest on an overcharge (by which is meant the amount collected on a shipment in excess of the legally published rate) accrues from the date of its collection by the carrier whether arising from an error in rate, weight, or classification.

The Commission does not regard it as unlawful for a claimant to accept in satisfaction of his claim the ascertained amount of an overcharge without interest; and the Commission is of the opinion that when such a refund is made by the carrier within 30 days after the improper collection of the overcharge, it may be regarded, in accordance with a well-established usage, as a cash transaction, upon which interest does not accrue.

The views expressed in this ruling shall be understood as applying to all pending and unsettled overcharge claims and to those arising in the future, but not as authorizing or requiring the reopening of any claim which has been settled and closed by the acceptance by a claimant of the amount of an overcharge without interest. (See *Scattergood & Co. v. L. S. & M. S. Ry. Co.*, U. R. Op. 2040; and *International Lumber Co. v. C. N. Ry. Co.*, 40 I. C. C., 283.)

March 13, 1916.

490. TRACKAGE RIGHTS OVER AN INDUSTRIAL ROAD.—Upon inquiry by a common carrier respecting proposed trackage rights over a portion of a logging road, *Held*, That if the common carrier uses the logging road in interstate commerce or as a highway for interstate commerce the logging road must keep its accounts as required by section 20 of the act; it will also be subject to the provisions of the safety-appliance acts.

March 23, 1916.

491. EXCHANGE OF SERVICES UNDER CONTRACTS BETWEEN RAILROADS AND TELEGRAPH, TELEPHONE, OR CABLE COMPANIES.—Upon inquiry whether under section 1 of the act¹ a railroad may contract with a telegraph company to transport the latter's property, either for use on the railroad's line or elsewhere, at a rate different than the regularly published rate for such transportation: *Held*, That such an exchange of services may lawfully be made only upon the basis of the legally established rates

¹ Section 1 provides: "That nothing in this act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers for an exchange of services."

of the railroad and on the basis of the fixed charges of the telegraph company regularly exacted of other customers for similar services; except that such carriers may so contract, without reference to said lawful rates and charges, for the transportation of the property of the telegraph company over the line of the contracting railroad company for use along the latter's line and in the construction, improvement, or operation thereof; that is to say, when such transportation is not conducted by said railroad as a common carrier. (Amends and modifies ruling 219 and cancels ruling 364; see also ruling 305.)

April 4, 1916.

492. REFUND OF FARE FOR CHILD UNDER FIVE YEARS OF AGE.—A passenger traveling with a child under five years of age intended to purchase one ticket, the tariffs providing for the free transportation of children under that age. The carrier's agent, however, sold the passenger two full-fare tickets and they were used for the journey. *Held*, That the participating lines might join in refunding the fare paid for the child. (Compare ruling 163.)

493. FREE TRANSPORTATION TO INSURANCE SUPERVISORS.—Insurance supervisors carried on the pay rolls of a railroad and devoting only a part of their time to the railroad service, but who are subject to call, may lawfully use trip passes when traveling exclusively on the business of the railroad. (See rulings 208, 412, and 426.)

April 22, 1916.

494. RESPONSIBILITY OF INITIAL CARRIER FOR STOLEN TICKETS HONORED BY ITS CONNECTIONS.—Certain passenger tickets stolen from an initial carrier were later honored by the connecting lines. *Held*, That the initial carrier is responsible to its connections for their revenue, the tickets showing its approved stamp although fraudulently affixed thereon.

April 27, 1916.

495. REFUND OF PASSENGER FARE IN EXCESS OF SERVICE RENDERED.—A passenger, applying for second-class carriage, was handed a first-class round-trip ticket from Minneapolis to San Francisco and return, and paid the tariff fare therefor. Under the belief that it was a second-class ticket he traveled in that class to Los Angeles, and then presented the unused portion of the

ticket for redemption: *Held*, That refund should be made in the difference between the fare paid for the ticket and the fare applicable to a second-class one-way ticket from Minneapolis to Los Angeles.

July 3, 1916.

496. RATES BASED ON VALUE OF PROPERTY AS DECLARED AT THE TIME AND PLACE OF SHIPMENT.—A tariff provided that—

carriers, parties hereto, have no means of determining value of live stock when offered for shipment and live stock will not be accepted for transportation unless the shipper or his agent declares in writing the valuation at time and place of shipment. The rates named in tariff shall be applied on animals, the actual value of which does not exceed the following amount.

Live stock valued at \$5 per head at the shipping point was sold at destination at an average price exceeding that amount. Upon inquiry whether the charges should be assessed at the rate applicable to live stock of the value at which it was sold at destination: *Held*, That under such a tariff provision the value declared by the shipper at the time and place of shipment is the basis for determining the rate applicable and that a reasonable difference between that value and the value at destination is not evidence of a misstatement of value at the point of origin. (See rulings 58 and 295; also *In re The Cummins Amendment*, 33 I. C. C., 682, 693.)

October 3, 1916.

497. APPLICATION OF AVERAGE AGREEMENT UNDER CODE OF UNIFORM DEMURRAGE RULES.—A consignee at St. Louis, under proper tariff authority, reconsigned a shipment to a storage warehouse on the tracks of a terminal carrier at that point. Upon inquiry, *Held*, That as the terminal carrier had an independent average demurrage agreement with the storage warehouse, it must treat the storage warehouse as the consignee within the meaning of *Conference Ruling* 463. (See also ruling 409.)

October 16, 1916.

498. APPLICATION OF AVERAGE AGREEMENT UNDER CODE OF UNIFORM DEMURRAGE RULES.—Before cars loaded by an industry were switched from its warehouse their contents were sold to another shipper to whom bills of lading were issued by the carrier: *Held*, That the average agreement between the carrier and the industry may lawfully be applied. (See rulings 409 and 463.)

November 8, 1916.

499. CANCELED TARIFFS NEED NOT BE KEPT POSTED.—Under section 6 of the act to regulate commerce, carriers are required to keep posted for public inspection only their current tariffs and tariffs filed to become effective in the future.

500. RELEASED RATES UNDER CUMMINS AMENDMENT AS FURTHER AMENDED.—Under the so-called Cummins amendment as further amended, carriers when authorized or required by the Commission may establish rates on property, other than ordinary live stock, based upon its agreed or declared value even though the value so declared or agreed to may be less than the true value of the property transported.

November 28, 1916.

501. ISSUING CARRIER'S RESPONSIBILITY UNDER JOINT RATE PUBLISHED WITHOUT PROPER CONCURRENCE.—An originating carrier having published a joint through rate without the concurrence of a connecting line, the higher combination of intermediate rates was applied. Following *du Pont de Nemours Powder Company v. Wabash Railroad*, 33 I. C. C., 507, *Held*, That the through rate should have been applied, the originating carrier assuming the difference between that rate and the higher combination rate without assistance from the other carriers participating in the movement. (See rule 68 of Tariff Circular 18-A.)

January 8, 1917.

502. ROUTING OF SHIPMENTS BY CONSIGNEES.—In view of the provisions of an act of Congress entitled "An act relating to bills of lading in interstate and foreign commerce," approved August 29, 1916, *Conference Rulings 332, 453, and 482* are rescinded.

February 26, 1917.

503. HANDLING OF CIRCUS AGENTS AND ADVANCE CARS.—While the advance cars of a circus may properly be handled on regular trains under special circus rates, the use of special circus mileage books should be confined to employees and circus members accompanying the circus train and should not be used on regular passenger trains.

March 12, 1917.

504. RELEASED AND DECLARED VALUE RATES.—Upon the petition of a shipper to require a carrier to establish rates depending upon the declared or agreed value of the property trans-

ported, a hearing will be had and an order thereon will issue. Upon a petition by a carrier for authority to establish such a rate, the Commission will investigate its reasonableness and propriety in such manner and by such means as it may deem proper; any rate so authorized must be published and posted as required by law and will be subject to suspension on protest and to attack on complaint as in the case of other rates.

April 2, 1917.

505. TRAFFIC PASSING THROUGH THE UNITED STATES FROM A POINT IN AN ADJACENT FOREIGN COUNTRY TO A POINT IN AN ADJACENT FOREIGN COUNTRY.—With respect to a shipment moving from a point in Canada through the United States to Boston consigned for export to a point in Nova Scotia: *Held*, That, following the ruling announced in *Seymour v. M. L. & T. R. R. & S. S. Co.*, 35 I. C. C. 492, and *Canales v. G., H. & S. A. Ry. Co.*, 37 I. C. C., 573, the Commission is without jurisdiction.

April 17, 1917.

506. DEMURRAGE UNDER AVERAGE AGREEMENT ON STATE AND INTERSTATE SHIPMENTS.—Where the demurrage rules and rates on state and interstate traffic differ, *Held*, That credits on state traffic under an average agreement may not lawfully be offset against the debits on interstate traffic.

April 23, 1917.

507. SHIPMENTS HELD AT TRANSIT POINT BEYOND TRANSIT PERIOD BECAUSE OF INABILITY OF CARRIER TO SUPPLY CARS.—Certain shipments were placed in transit under a tariff rule providing, in substance, that the billing would not be recognized for warehousing and reshipping purposes with respect to shipments on hand at the close of August 31 of any year. Upon inquiry whether, the carrier being unable to comply with a demand for cars made only a day or two before the clearing day, the shipper is entitled to a refund of the difference between the through rate and the sum of the local rates to and from the transit point: *Held*, It not being shown that the carrier failed in its duty to supply cars upon reasonable request, the refund may not be made. (See *Peck v. A., T. & S. F. Ry.*, U. R. Op. A-923.)

May 12, 1917.

508. FILING OF INFORMAL COMPLAINTS. STATUTE OF LIMITATIONS.—Section 16 of the act to regulate commerce, as amended, provides that "All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues and not after." In *Blinn Lumber Co. v. Southern Pacific Co.*, 18 I. C. C., 430, it was decided that the two-year period is to be computed from the date of the delivery of the shipment.

In all cases the complaint must be filed by or on behalf of the party who has borne the transportation charges as such. *International Agricultural Corporation v. Louisville & Nashville Railroad Co.*, 29 I. C. C., 391, and *Oden & Elliott v. Seaboard Air Line Railway*, 37 I. C. C., 345.

In order that it may operate to stay the statute of limitations, an informal complaint must be filed with the Commission within two years from the time the cause of action accrues, and (a) must name the defendant carrier or carriers; (b) must allege a violation of the act and ask affirmative relief; and (c) must describe the shipment by naming the point of origin and destination, the consignor and consignee, the date of the shipment, the initials and number of the car, in the case of carload shipments, or (d) must give such available information as may be reasonably necessary to enable the defendant carrier or carriers to identify the shipment. A notification to the Commission of the possibility or intention of filing a complaint for the recovery of damages is not such a filing as is contemplated by the statute.

An informal complaint embodying the information above indicated should be filed with sufficient copies to enable the Commission to send one copy to each defendant carrier as notice to it of the complaint, retaining one copy for its own use.

When a complaint for reparation has been before the Commission informally on the special docket or otherwise, and the parties have been notified by the Commission that the complaint is denied or that it can not be determined informally, or when the parties voluntarily withdraw the complaint from informal consideration, it may not be reconsidered informally if not again submitted to the Commission within six months from the date of such notification or withdrawal, nor may it be filed as a formal complaint unless so filed within six months from the date of such notification or withdrawal: *Provided, however*, That this rule does not apply when the two-year period from the date of delivery of the shipment has not expired. (See rule III of the Rules of Practice.)

June 19, 1917.

509. DRAYAGE EXPENSE RESULTING FROM ERRONEOUS TERMINAL DELIVERY.—*Conference Ruling 474b* amended and 392 rescinded.—In case the consignee elects to accept the shipment at the terminal where delivery has been erroneously offered rather than insist upon delivery at the terminal designated, the shipper or the consignee is entitled to recover damages in the sum of the difference between the expense of drayage actually incurred at a reasonable charge therefor and the expense which would have been incurred if proper delivery had been effected by the carrier. The carrier responsible for misrouting the shipment, resulting in a claim of this character, may reimburse the shipper or consignee entitled to reimbursement wholly at its expense without a specific order of the Commission in each case. In pursuing this course carriers must accept full responsibility for the correct application of the rule and must make reports to the Commission in accordance with its order of July 3, 1917.

June 21, 1917.

510. WRITTEN NOTICE TO CARRIER CONSTITUTES PRESENTATION OF CLAIM.—*Modifying Conference Ruling 456.* It is the view of the Commission that the provision in the uniform bill of lading requiring that claims for loss, damage, or delay must be made in writing within a specified period is legally complied with when the shipper, consignee, or the lawful holder of the bill of lading, within the period specified, files with the agent of the carrier, either at the point of origin or the point of delivery of the shipment, or with the general claims department of the carrier, a claim or a written notice of intended claim describing the shipment with reasonable definiteness. (See *G. F. & A. Ry. v. Blish Milling Co.*, 241 U. S., 190.)

July 19, 1917.

511. PASSES TO FURLOUGHED EMPLOYEES ENTERING MILITARY OR NAVAL SERVICE OF THE UNITED STATES.—Upon inquiry: *Held*, That employees of common carriers who enter the military or naval service of the United States in the present war and who are carried on the records of the carrier as furloughed employees, to be restored to the carrier's service at the termination of the war, are furloughed employees within the meaning of section 1 of the act to regulate commerce and the carriers may lawfully grant free passes to dependent members of their families.

July 20, 1917.

512. INDUSTRIAL SWITCHING TRACKS.—*Conference Ruling 427* modified and amended.—A carrier may not lawfully build a switch track inside the plant boundary of an industrial company without adequate compensation therefor. And an agreement by the industry to give the carrier all or a part of its traffic as compensation for the building of the track is not regarded as “adequate compensation.” (See ruling 110.)

513. EXPRESS COMPANIES MAY NOT CARRY PROPERTY FOR OFFICERS AND EMPLOYEES EXCEPT AT PUBLISHED RATE.—Upon inquiry, *Held*, That the act to regulate commerce as amended does not authorize an express company subject to the act to carry property either for its own officers or employees or for the officers and employees of other common carriers, except at its legally published rate. (See rulings 157, 208*b*, and 361.)

By the Commission,

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

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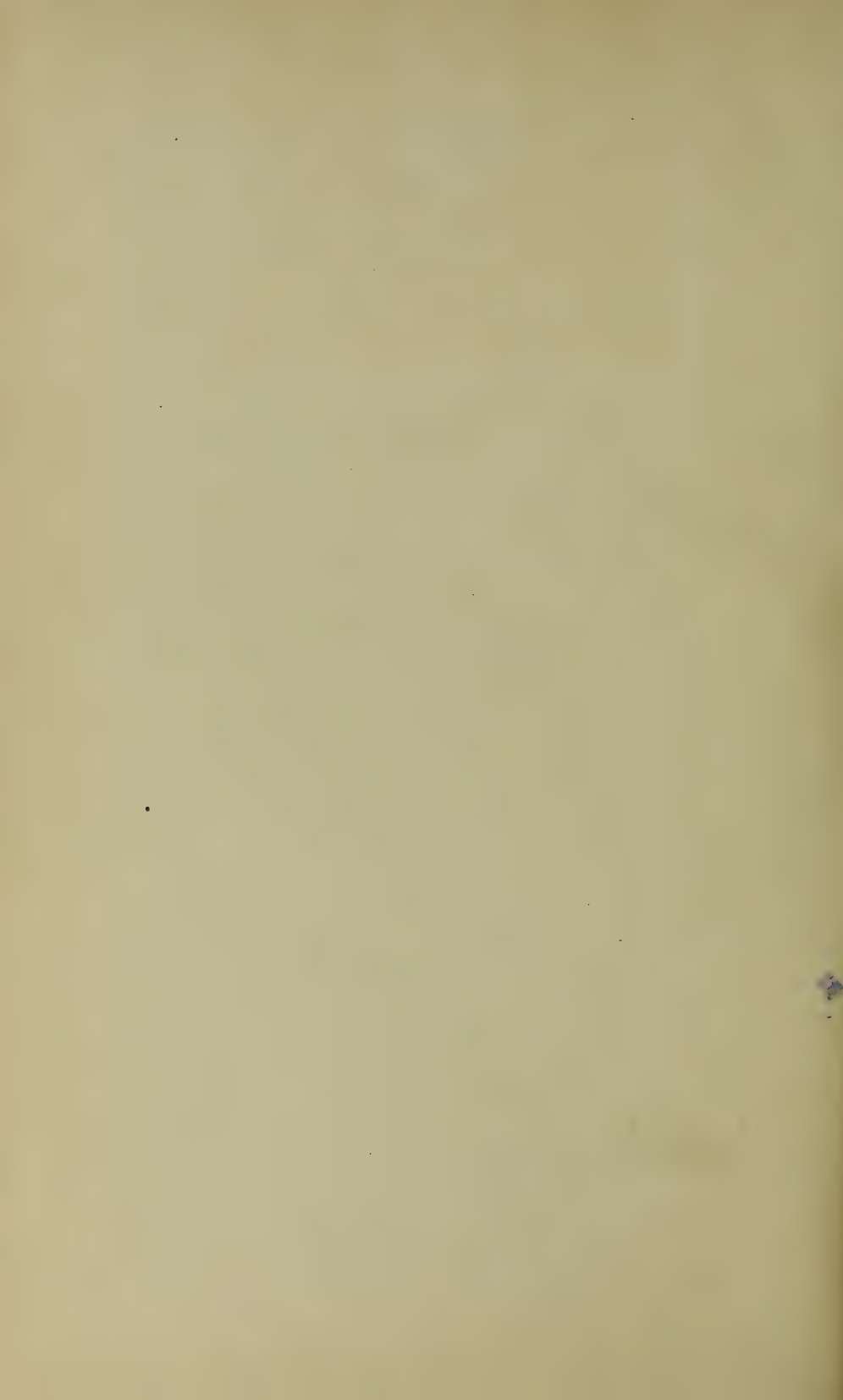
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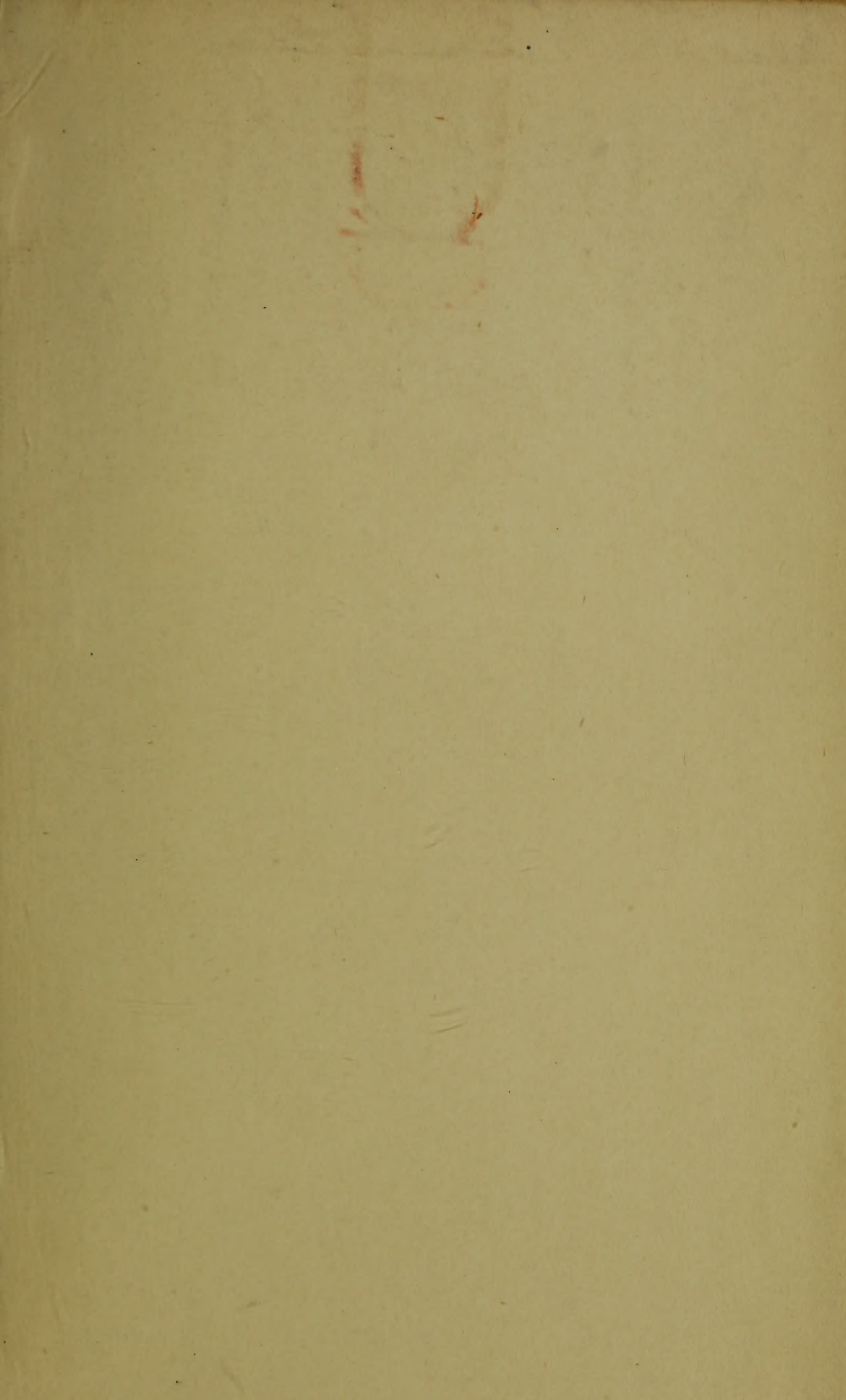
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